IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. .

STATE OF IOWA, PLAINTIFF,

vs.

ABRAHAM SLIMMER, JR., CHARLES BECHHOEFER, ADOLPH LIPMAN, AND THE STATE OF MINNESOTA, DEFENDANTS.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

Now comes the complainant by counsel, and moves the court for leave to file the Bill of Complaint hereto attached.

H. M. HAVNER,
Attorney General of the State of Iowa.
BURTON SWEET,
Counsel for Complainant.

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ABRAHAM SLIMMER, JR., CHARLES BECHHOEFER, ADOLPH LIPMAN, AND THE STATE OF MINNESOTA, DEFENDANTS.

BILL IN EQUITY.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes the plaintiff, and averring that this bill is filed and this action commenced by the Attorney General of the plaintiff State, under direction by the Governor thereof, and that the plaintiff and defendant, The State of Minnesota, are each sovereign States of the United States of America, and that the defendants, Abraham Slimmer, Jr., and Charles Bechhoefer are each citizens of the State of Minnesota, and

residents of the city of Saint Paul, in Ramsey county thereof, and that the defendant, Adolph Lipman, is a citizen of the State of Wisconsin, and a resident of the city of Milwaukee, in Milwaukee county thereof, for cause of action alleges:

I.

That for many years one Abraham Slimmer, deceased, was a resident of and domiciled in the State of Iowa, and was at his death, on August 15, A. D. 1917, a resident of and domiciled in the city of Dubuque, in Dubuque county, in said State.

II.

That said Abraham Slimmer, deceased, was in his lifetime possessed of property of the value of about five hundred and fifty thousand dollars ($550,000), and, being unmarried and without issue, said property will go either by will or intestate succession to strangers to the blood or to collateral heirs.

III.

That the property of the said decedent, and which now constitutes his estate, consists, as plaintiff is informed and believes, entirely of premissory notes, except that the said decedent died seized of, and there is now a part of said estate certain three and one-half per cent of United States Liberty Bonds in the amount of twenty-five hundred dollars ($2,500.00), and plaintiff charges that for at least ten years immediately preceding the death of the said Abraham Slimmer, deceased, his property consisted, except for his clothing and personal effects, entirely of evidences of indebtedness to him, principally in the form of promissory notes.

IV.

That said Abraham Slimmer, deceased, intending and purposing to cheat and defraud the State of Iowa out of

such taxes as might and should have been lawfully assessed and levied against his property during his lifetime, pretended to be a resident of and to have a domicile in the city of St. Paul, in the State of Minnesota, and conspired and confederated with the defendants Bechhoefer and Slimmer that upon his death, as a means of accomplishing his said purpose, the administration of his estate and the probate of his will, should he leave one, should be taken from the State of Iowa and had in the State of Minnesota.

V.

That with the same purpose, and as a means of accomplishing the same, the evidences of indebtedness of which the property of said Abraham Slimmer, deceased, consisted, were left in the custody and possession of the defendant Slimmer at the city of St. Paul, in Ramsey county, Minnesota, except a certain promissory note for the sum of three thousand dollars ($3,000.00), which, at said Abraham Slimmer's death, together with his clothing and personal effects, was at the city of Dubuque, in the State of Iowa, where said Abraham Slimmer, deceased, had lived and died.

VI.

That by reason of the domicile of said Abraham Slimmer, deceased, all of his property was subject to taxation by the State of Iowa, but the said Abraham Slimmer, deceased, during his lifetime, pursuant to said scheme and purpose, concealed the same from the said State and its officers and agents, and failed and refused to return the same for taxation, notwithstanding his duty so to do under the laws of said State.

VII.

That, as plaintiff is informed and believes, the extent of the said Abraham Slimmer's estate was substantially the

same for the five years next preceding his death as at his death.

VIII.

That under the laws of the plaintiff State omissions to list and assess property may be corrected; and all property so omitted may be listed and assessed, and the taxes levied and collected thereon at any time within five years from the date of such omission.

IX.

That this plaintiff has the right and is entitled to have assessed and levied against and collect from said property as taxes not less than the sum of $13,750.00.

X.

That under the laws of plaintiff State said taxes cannot be collected without an assessment and levy thereof against the personal representatives of the deceased; and such assessment and levy must be made within the plaintiff State.

XI.

That by reason of the domicile of the said Abraham Slimmer, deceased, the plaintiff is entitled to have original probate of the last will and testament of the said Abraham Slimmer, deceased, in its tribunals, and to administer upon and distribute his estate through said tribunals, assess and collect, during said administration, general taxes upon the entire estate, and to collect from said estate the fees as provided by its laws, and to assess and collect from said estate the taxes of which this plaintiff State was defrauded during the last five years of the lifetime of the deceased.

XII.

That immediately upon the death of the said Abraham Slimmer, deceased, and pursuant to said scheme and purpose, and as a means of carrying out the same, the defendants, Bechhoefer and Slimmer, either by themselves or their agents, came to the city of Dubuque, where the said Abraham Slimmer, deceased, had lived and died, and took with them to the city of St. Paul, in the State of Minnesota, such property of the said Abraham Slimmer, deceased, as is hereinbefore described as then being physically within the State of Iowa, to wit; a certain promissory note for three thousand dollars ($3,000.00), payable to said Abraham Slimmer, and his clothing and personal effects.

XIII.

That thereupon, and as a means of carrying out said scheme and purpose, the defendants Slimmer and Bechhoefer, on or about the 21st day of August, A. D. 1917, procured the appointment by the probate court of Ramsey county, Minnesota, of defendant Bechhoefer as special administrator of the estate of said Abraham Slimmer, deceased, pending the proceedings described in paragraph XIV hereof; but plaintiff avers that by the laws of the State of Minnesota a special administrator is a mere custodian, and without power to do anything but hold the property coming into his possession until some other form of administration shall be granted, so that the same shall not be wasted, destroyed, or appropriated before being turned over to the jurisdiction or court entitled to administer upon and distribute the same, and the right thereto does not, under the laws of Minnesota, or elsewhere, depend upon the domicile of the decedent owning the same in his lifetime, or require nor involve any holding or finding as to the domicile of the decedent.

XIV.

That pursuant to said scheme and purpose, and notwithstanding the domicile and residence of the decedent as charged in paragraph I hereof, the said defendants, Slimmer and Bechhoefer, on or about the 21st day of August, A. D. 1917, produced and filed in the probate court of Ramsey county, in the State of Minnesota, a paper or papers purporting to be the last will and testament of the said Abraham Slimmer, deceased, and by falsely claiming and pretending that the decedent was domiciled therein, procured from the said probate court of Ramsey county, in the State of Minnesota, an *ex parte* order and decree, admitting the said instrument to probate as the last will and testament of said Abraham Slimmer, deceased, and a finding therein that the decedent was domiciled in and a resident of said Ramsey county; and by the same method, and at the same time, procured from the same court an order appointing and commissioning them as executors of the said last will and testament.

XV.

Thereafter and on the 6th day of November, A. D. 1917, the defendant, Adolph Lipman, alleging himself to be an heir at law of the said Abraham Slimmer, deceased, appealed to the District Court of the State of Minnesota for the Second Judicial Circuit, from the orders of the said probate court of Ramsey County, admitting said papers to probate and appointing the defendants, Bechhoefer and Slimmer, executors; and in connection with said appeal, the orders appealed from, and their effect, have been suspended, and the property which is the estate of the said Abraham Slimmer, deceased, is now in possession and custody of the defendant Bechhoefer, as special administrator.

XVI.

That this plaintiff has never appeared in any of the proceedings in the State of Minnesota hereinbefore described and does not desire to submit its claims to the tribunals of the State of Minnesota.

XVII.

That in said proceedings now pending in the State of Minnesota, the defendants, Bechhoefer and Slimmer, are urging and pressing their claim that the said Abraham Slimmer, deceased, was domiciled in the State of Minnesota, and that his will should be probated and his estate fully administered upon and distributed in the State of Minnesota, and according to its laws, and if the relief hereinafter prayed be not granted, the property of the said Abraham Slimmer, deceased, will be distributed by the courts of the defendant State in disregard of the rights and claims of the plaintiff.

XVIII.

That as plaintiff is informed and believes, the defendant State of Minnesota being assured that the decedent was domiciled therein and that he had property therein at his death, makes claim to the right to administer upon and distribute the same according to its laws, and without any reference to the laws of the plaintiff State or to its rights and claims.

XIX.

That on the 7th day of January, A. D. 1918, it was adjudged and decreed, by the District Court of Iowa in and for Dubuque County, in a proceeding properly begun, at the instance of this plaintiff, upon the petition of its Treasurer of State, that Abraham Slimmer, deceased, was domiciled as

charged in paragraph *1* hereof, and letters of administration were granted upon his estate to one D. E. Mullany, and said Mullany, having qualified as by law provided, is now acting under said letters, and claiming under the laws of plaintiff State and his appointment the right to possession and control of all the assets of Abraham Slimmer deceased, and the right to have all claims against said estate made and their validity determined in the said District Court of Iowa in and for Dubuque County.

XX.

That on or about the 7th day of January, A. D. 1918, this plaintiff learned that the defendants Bechhoefer and Slimmer for the purpose of carrying into effect the scheme and purpose hereinbefore charged, and for the purpose of furthering and carrying on the proceedings instituted by them in the courts of Minnesota, were about to come into the State of Iowa, either in person or by attorney for the purpose of taking the depositions of certain witnesses before one Frank T. Hardy, a notary public in and for Dubuque County in said State, and an officer thereof. That thereupon this plaintiff instituted in the District Court of Iowa in and for Dubuque County an action in equity praying that the said Bechhoefer and Slimmer be enjoined and restrained from carrying out said scheme and purpose; from taking or using the depositions of said witnesses for use in the proceedings in Minnesota; and praying that the witnesses be restrained from attending before and giving their testimony to said Hardy and from attending before and giving their testimony to any courts of the State of Minnesota; and praying that the defendant Hardy be enjoined and restrained from using his place and authority as an officer of the State to take or return said depositions in furtherance of the scheme and purpose of the defendants Bechhoefer and Slimmer.

XXI.

That thereupon and on said day and in the manner provided by law, and according to the practice prevailing in the courts of the State of Iowa, a writ of injunction was issued enjoining the defendants as prayed until the further order of the court in the premises. The said writ was duly served upon the said Frank T. Hardy and upon the persons whose testimony it had been designed to take before him.

XXII.

The defendants Bechhoefer and Slimmer have not been found within the State of Iowa, and no service of the writ of injunction has been made on them, and they have announced and declared their purpose to evade the jurisdiction of the courts of the State of Iowa in the premises and to avoid and prevent the service of said writ by remaining without the borders of said State, and have announced and declared that they will not appear in said proceedings either in person or by attorney.

In consideration whereof, and forasmuch as the plaintiff has no adequate relief under the strict rules of the common law for the matters alleged and charged in this petition; and to the end therefor that the said Abraham Slimmer, Jr., the said Charles Bechhoefer, the said Adolph Lipman, and the said State of Minnesota may be required to make answer according to the best of their knowledge, information, remembrance and belief, to all and singular the matters hereinbefore stated and charged, as fully and completely as if the same were here repeated and they were thereunto particularly interrogated, but not under oath, answer under oath being hereby specially waived, this plaintiff prays,

1. That it be adjudged and decreed that for more than five years immediately preceding his death on August 15, A. D. 1917, and on said day, Abraham Slimmer, deceased, was a citizen and resident of, and domiciled in the City of Dubuque, in Dubuque County, in the State of Iowa.

2. That his estate consisted of evidence of indebtedness to him, and that no part of his estate was at his death in the State of Minnesota.

3. That the State of Iowa has, and that the State of Minnesota has not, jurisdiction to administer upon and distribute the estate of said Abraham Slimmer, deceased.

4. That, thereupon, plaintiff have such order, judgment or decree as shall be necessary to give effect to its said rights and to secure the abatement and dismissal of the proceedings herein described, and to insure that such proceedings as shall be necessary to the administration and distribution of said estate shall be had in the State of Iowa and according to its laws, and for such other relief as in the cause shall to your honors seem meet.

5. That, pending the further order of the court in the premises, the defendants and each of them be enjoined and restrained from proceeding further with the proceedings hereinbefore described as being pending in the State of Minnesota, or with the administration or distribution of the estate of said Abraham Slimmer, deceased—to the end that the jurisdiction of your honors involved hereby may not be avoided or evaded and that final judgment herein may be effectual.

May it please your honors to grant unto the plaintiff writs of subpœna, directed to said defendants Abraham Slimmer, Jr., Charles Bechhoefer, Adolph Lipman, and The State of Minnesota, commanding them, and each of them, at a certain time, and under a penalty therein to be named, to appear before your honors in this honorable court, then and there, severally, to answer all and singular the matters aforesaid, and to stand to, abide and perform such other and further orders and decrees herein as to your honors shall seem meet.

THE STATE OF IOWA,
By H. M. HAVNER,
Attorney General.

BURTON SWEET,
Solicitor for the State of Iowa.

Supreme Court of the United States.

OCTOBER TERM, 1917.

STATE OF IOWA,

Plaintiff,

vs.

ABRAHAM SCHMIDT, JR., CHARLES SCHMIDT, ADOLPH LEHMAN and THE STATE OF MINNESOTA,

Defendants.

RECORD OF PROCEEDINGS IN PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, IN RE ESTATE OF ABRAHAM SCHMIDT.

LAST WILL AND TESTAMENT OF ABRAHAM SLIMMER.

I, Abraham Slimmer, of the City of St. Paul, in the County of Ramsey and State of Minnesota, formerly of the City of Waverly, in the County of Bremer and State of Iowa, being of lawful age and sound mind and memory, do make, declare and publish this instrument to be my last will and testament, intending hereby to dispose of all the estate, real or personal, of which I may be seized or possessed or which I may have the power to dispose of by will at the time of my decease, hereby revoking all former wills and codicils heretofore made by me.

I.

I give and bequeath unto my niece Rosa Salinger Fischel, of Chicago, Illinois, the sum of Four Thousand Dollars ($4000), and if she shall not survive me, then, and only in that event, I give and bequeath to her husband the sum of Two Thousand Dollars ($2000), if he shall survive me.

II.

I give and bequeath unto my niece Aline Bing, of Chicago, Illinois, the sum of Three Thousand Dollars ($3000), and if she shall not survive me, then the whole thereof to her son, Dr. Jacob Bing, if he shall survive me.

III.

I give and bequeath to my nephew Edward Slimmer, of Chicago, Illinois, the sum of Fifteen Hundred Dollars

($1500); to my grandniece Mrs. Clara Hirsch Weiss, daughter of my niece Flora Hirsch, Deceased, the sum of Fifteen Hundred Dollars ($1500), and to Isaac Hirsch, son of my niece Flora Hirsch, Deceased, the sum of Two Thousand Dollars ($2000), both now living in the City of Chicago; to Mrs. Pauline Schimmelpfennig, of Chicago, Illinois, the daughter of my departed nephew Louis Loser, the sum of Fifteen Hundred Dollars ($1500); to my nephew William Lipman, of Milwaukee, Wisconsin, the sum of One Thousand Dollars ($1000); to my nephew Leon Loser the sum of One Thousand Dollars ($1000); to my nephew, Julius Schlimmer, of Obersitzke, Germany, the sum of Twenty-five Hundred Dollars ($2500), which sum shall be paid to his widow if he shall not survive me, and if neither shall survive me, then the whole thereof to the children of said Julius Schlimmer, in equal shares; and to Max Cohn, of Chicago, Illinois, the son of my departed niece Johanna Cohn, the sum of One Thousand Dollars ($1000).

IV.

I give and bequeath to Mrs. Isador Karger, widow of my nephew Isador Karger, Deceased, of Milwaukee, Wisconsin, the sum of One Thousand Dollars ($1000), and if she shall not survive me, then the whole thereof to her children then surviving, in equal shares.

V.

I give and bequeath to my nephew Leopold Karger, of Milwaukee, Wisconsin, the sum of One Thousand Dollars ($1000), which sum shall be paid to his widow, if he shall not survive me, and if neither shall survive me, then the

whole thereof to the children of said Leopold Karger, in equal shares.

VI.

I give and bequeath to my nephew Jacob Lipman, of Milwaukee, Wisconsin, the sum of Three Thousand Dollars ($3000), and if he shall not survive me, then, and only in that event, I give and bequeath to his wife the sum of Three Thousand Dollars ($3000), but if neither the said Jacob Lipman nor his wife shall survive me, I give and bequeath the sum of Three Thousand Dollars ($3000) to their children and the lawful issue of any deceased child taking the share of the parent.

VII.

I give and bequeath to Joseph F. Grawe, of Waverly, Iowa, of "The Bremer County Independent," the sum of Three Thousand Dollars ($3000), as an earned reward for his ever aiming to uphold the right and expose the wrong through the columns of his paper. If he shall not survive me, then said sum shall go to his wife, if she is living, but if both said Joseph F. Grawe and his wife shall not survive me, then such legacy shall lapse, but in that event their sons, Carl F. Grawe and Joseph F. Grawe shall each receive the sum of One Thousand Dollars ($1000).

VIII.

The foregoing legacies shall stand upon an equal footing and shall be paid in preference and prior to the payment of the legacies hereinafter set forth.

IX.

I give and bequeath to the Home of Aged Jews, located on Sixty-second Street and Drexel Avenue, in the City of Chicago, State of Illinois, the sum of Ten Thousand Dollars ($10,000), which sum shall become an endowment fund, and only the interest earned thereon shall be used for the benefit of said home.

X.

I give and bequeath unto the Jewish Farm School, located at or near Doylestown, Pennsylvania, and now presided over by Dr. Joseph Krauskopf, the sum of Two Thousand Dollars ($2000), to become an endowment fund and only the interest or return thereof to be used.

XI.

I give and bequeath unto The Jewish Charities, of St. Paul, Minnesota, a corporation, now presided over by Ambrose Guiterman, the sum of Two Thousand Dollars ($2000), to become an endowment fund and only the interest or return thereon to be used.

XII.

I give and bequeath unto the Jewish Orphan Asylum, of Cleveland, Ohio, the sum of Two Thousand Dollars ($2000), to become an endowment fund and only the interest or return thereon to be used.

XIII.

I give and bequeath unto Moses Montefiore Kesher Home for Aged and Infirm Israelites, of Cleveland, Ohio, the sum of Two Thousand Dollars ($2000), to become an endowment fund and only the interest or return thereon to be used.

XIV.

I give and bequeath unto Piney Woods Country Life School, of Braxton, State of Mississippi, the sum of Two Thousand Dollars ($2000), to become an endowment fund and only the interest or return thereon to be used.

XV.

I give and bequeath unto The Martha Washington Home of Wauwatosa, County of Milwaukee, Wisconsin, the sum of One Thousand Dollars ($1000), to become an endowment fund and only the interest or return thereon to be used.

XVI.

I give and bequeath unto the Home for Destitute Crippled Children, of the City of Chicago, the sum of One Thousand Dollars ($1000), to become an endowment fund and only the interest or return thereon to be used.

XVII.

I give and bequeath unto the Jewish Consumptives Relief Association of California, located at Los Angeles, California, the sum of Twenty-five Hundred Dollars ($2500),

to become an endowment fund and only the interest or return thereon to be used.

XVIII.

I give and bequeath unto The Hebrew Orphans Home of Atlanta, Georgia, the sum of Two Thousand Dollars ($2000), to become an endowment fund and only the interest or return thereon to be used.

XIX.

I give and bequeath to the Jewish Home for the Aged, of St. Paul, Minnesota, the sum of Three Thousand Dollars ($3000), to be used as an endowment fund, and only the interest earned by said Three Thousand Dollars ($3000) shall be used.

XX.

I give and bequeath to the Home of the Aged, at the City of Des Moines, State of Iowa, the sum of Five Thousand Dollars ($5000), which sum shall become an endowment fund, and only the interest of which shall be used.

XXI.

I give and bequeath to the Jewish Consumptive Relief Society, of Denver, Colorado, the sum of Five Thousand Dollars ($5000), which sum shall become an endowment fund, the interest of which shall only be used.

XXII.

I give and bequeath to the Home for the Friendless, now located at 469 Collins Street, in the City of St. Paul, State

of Minnesota, the sum of Two Thousand Dollars ($2000), and to the Home for the Aged and Infirm Poor, located at 90 Wilkin Street, in St. Paul, Minnesota, the sum of Two Thousand Dollars ($2000), which sums so bequeathed shall be received as endowment funds, the interest of which shall only be used.

XXIII.

I give and bequeath unto the Humane Society of the City of Dubuque, Iowa, the sum of Two Thousand Five Hundred Dollars ($2500), which sum shall be received as an endowment fund, and the interest and return only to be used.

XXIV.

I give and bequeath unto The National Jewish Hospital for Consumptives, of Denver, Colorado, the sum of Five Thousand Dollars ($5000), which sum shall be received as an endowment fund, and the interest and return thereon only to be used.

XXV.

If my estate shall become reduced so as to be insufficient to pay the bequests and legacies above set forth to the full amount thereof, then and in that event I direct that my Executors shall pay the whole of the legacies set forth in Subdivisions I to VII inclusive, and all other legacies set forth in this will shall share pro rata out of the proceeds of my estate, without reference to any legacies. I will and direct that after One (1) year from my decease, all legacies then remaining unpaid shall bear interest at the rate of five per cent per annum until paid. My Executors

in their discretion may pay any legacy set forth in this will in instalments, and they may make payment of any legacy by using for that purpose, at their face value and interest, any promissory notes which they may receive in the course of administration, or upon the settlement of my estate.

XXVI.

All of the rest, residue and remainder of my estate, of every name, nature and description, owned or possessed by me at the time of my decease, I give, will, bequeath and devise unto The Jewish Hospital Association of Milwaukee, Wisconsin, and the whole of the estate so willed shall become an endowment fund, and only the interest or return thereon shall be used for the purpose of said institution. This legacy is upon the express condition that said The Jewish Hospital Association of Milwaukee, Wisconsin, before receiving any part or portion of such estate, shall deliver to the legal representatives of my estate, an agreement in writing, binding itself: 1st, To pay to Mrs. John Clark, formerly of Waverly, Iowa, but now residing at Dubuque, Iowa, the sum of Twenty-five Dollars ($25) per month, for and during the remainder of her natural life, such payments to begin so soon as such legatee shall have received any portion of my estate; 2nd, To pay to my nephew Jacob Lipman, of Milwaukee, Wisconsin, the sum of One Thousand Dollars ($1000) per year, payable in quarterly instalments, for and during the remainder of his natural life, such payments to begin so soon as such legatee shall have received any portion of my estate.

In all cases where legatees named in this will die before my decease, the legacies and bequests made in favor of such deceased legatee shall lapse, unless a different disposition is specifically made by this will.

In all cases where I have heretofore made agreements with charitable institutions with reference to gifts made by me to such institutions, under which agreements there are provisions for a forfeiture of such gifts in favor of myself, my heirs and assigns, in case of violation of such agreements, I will and direct that all such forfeitures shall inure entirely to the benefit of the residuary legatee and devisee under this will.

XXVII.

Wills are frequently attacked by unscrupulous heirs under various pretensions for the purpose of obtaining money through a compromise for which there is no just ground, and which they cannot otherwise obtain. With this in mind it is my will that if any devisee or legatee named in this will, directly or indirectly, shall enter into any compromise or agreement for compromise in any form whatsoever with any person contesting or threatening to contest my will, or with any other party or parties in any manner or form whatsoever for the purpose of bringing about such compromise, then the devise or legacy given by my will to such devisee or legatee shall thereby become forfeited and annulled, and such devise or legacy shall pass to the general residuary estate. It is my will and I do hereby direct that if my will shall be disputed or contested or threatened to be disputed or contested, my Executors shall not enter into or consent to any compromise, directly

or indirectly, with the party or parties disputing or contesting, or threatening to dispute or contest my will, or with any other property or parties in any manner or form whatsoever, for the purpose of bringing about such compromise. If any devisee or legatee named in this will shall institute or cause to be instituted a contest of my will, or encourage or aid directly or indirectly such contest, then the devise or legacy given by my will to such devisee or legatee shall thereby become forfeited and annulled; and such devise or legacy shall pass to the general residuary estate.

XXVIII.

I name and appoint as the Executors of this my last will and testament, my nephew Abraham Slimmer, now residing at 966 Summit Avenue, St. Paul, Minnesota, and my friend Charles Bechhoefer, of St. Paul, Minnesota, and it is my will that they be not required to furnish bond as such Executors for any purpose whatsoever. Said Executors are authorized to grant, bargain, sell and convey any part or portion of my estate, real or personal, upon such terms and conditions as to them shall seem fit and proper, and without order of Court. In case of the death of either Executor, the survivor, at his option, may appoint a successor or may act alone.

XXIX.

Upon my demise, my Executors above named are requested to cause my body to be placed in a plain box and thereupon to have my body cremated.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal on this 3rd day of May, in the year One Thousand Nine Hundred and Sixteen.

A. SLIMMER (Seal)

In the presence of us and in the presence of each of us, the foregoing instrument was signed by Abraham Slimmer, on this 3rd day of May, 1916, and the said Abraham Slimmer thereupon declared said instrument to be his last will and testament and requested us to witness the execution thereof which we now do at the time of such execution and in his presence and in the presence of each other.

WM. LAWTHER, residing at DUBUQUE, IOWA.

J. J. ROWAN, JR., residing at DUBUQUE, IOWA.

W. S. LUDWICK, residing at DUBUQUE, IOWA.

I, Abraham Slimmer of St. Paul, State of Minnesota as and for a codicil of and to my will dated the Third day of May A. D. 1916, hereby confirming all the provisions in said will contained excepting as herein modified, do provide as follows:

I.

In addition to the bequests as in said will contained I hereby give, devise and bequeath to the Wise Memorial Hospital of the City of Omaha, State of Nebraska, the sum of five thousand dollars ($5000.00), which sum shall become an endowment fund, and only the interest earned thereon shall be used for the benefit of said hospital.

II.

I give and bequeath unto my friend, Dr. J. J. Rowan of the City of Dubuque, State of Iowa the sum of five hundred dollars ($500.00), and if he shall not survive me, this sum shall be paid unto his widow and if she shall not survive me, it shall be paid to his children, each one to share and share alike.

III.

I hereby annul and cancel that part of section three (3) of my said will above referred to that reads "To my nephew—Leon Loser, the sum of one thousand dollars ($1000.00) and instead thereof I hereby give, devise and bequeath to my nephew—Leon Loser—the sum of one hundred dollars ($100.00).

IV.

I hereby annul and cancel all of section nine (9) of my will above referred to, wherein I give and bequeath to the Home of Aged Jews, located at 62nd Street and Drexel Avenue in the City of Chicago and State of Illinois, the sum of ten thousand dollars ($10,000.00) and instead thereof I give and bequeath to the said Home for Aged Jews, located at 62nd Street and Drexel Avenue in the City of Chicago and State of Illinois, the sum of five thousand dollars ($5000.00) which sum shall become an endowment fund, and only the interest earned thereon shall be used for the benefit of said "Home."

V.

I hereby annul and cancel all of section eleven (11) of the will above mentioned, in which I give and bequeath unto the Jewish Charities of St. Paul, Minnesota, a corporation, the sum of two thousand dollars ($2000.00).

VI.

I hereby annul and cancel all of section nineteen (19) of my will above referred to, where I give and bequeath to the Jewish Home for the Aged of St. Paul, State of Minnesota, the sum of three thousand dollars ($3000.00) and instead thereof I give and bequeath to the said Jewish Home for the Aged of St. Paul, State of Minnesota, the sum of five thousand dollars ($5000.00) to be used as an endowment fund, and only the interest earned on said five thousand dollars ($5000.00) shall be used for the benefit of the "Home."

IN WITNESS WHEREOF, I have hereunto set my hand this 12 day of January, A. D. 1917, in the presence of the witnesses whose names appear below who at my request, and in my presence, and in the presence of each other have signed their names as witnesses hereto.

ABRAHAM SLIMMER.

Subscribed in our presence by Abraham Slimmer, this 12 day of January 1917 and by him declared to be a codicil to his last will and testament. In witnesse whereof we at his request, and in his presence and in the presence of each other have signed our names as witnesses hereto to the date last above written.

WILLIAM STOLTEBEN)
JAMES F. RYAN) Dubuque, Iowa.
LOUIS MURPHY)

SECOND CODICIL TO WILL OF ABRAHAM SLIMMER, OF THE CITY OF ST. PAUL, COUNTY OF RAMSEY, STATE OF MINNESOTA, FORMERLY OF THE CITY OF WAVERLY, IN THE COUNTY OF BREMER AND STATE OF IOWA.

I, Abraham Slimmer, do hereby confirm all the provisions of the annexed will dated the third day of May, 1916, and of the codicil thereto, dated the Twelfth day of January, 1917, except as herein modified, and I do hereby make, declare and publish this instrument as the second codicil to my said will.

I.

The provisions in favor of Jewish Consumptives Relief Society, of Denver, Colorado, set forth in the twenty-first subdivision of my will, is hereby modified by reducing the amount of such bequest from Five Thousand Dollars ($5000) to Twenty-five Hundred Dollars ($2500), so that subdivision, as amended, shall read as follows:

"XXI.

I give and bequeath to the Jewish Consumptives Relief Society, of Denver, Colorado, the sum of Twenty-five Hundred Dollars ($2500), which sum shall become an endowment fund, the interest of which shall only be used."

II.

The provision in favor of The National Jewish Hospital for Consumptives, of Denver, Colorado, set forth in the twenty-fourth subdivision of my will, is hereby modified by

reducing the amount of such bequest from Five Thousand Dollars ($5000) to Twenty-five Hundred Dollars ($2500), so that said subdivision, as amended, shall read as follows:

"XXIV.

I give and bequeath unto The National Jewish Hospital for Consumptives, of Denver, Colorado, the sum of Twenty-five Hundred Dollars ($2500), which sum shall be received as an endowment fund, and the interest and return thereon only to be used."

III.

The sixth subdivision of my said will is hereby modified so that said Subdivision VI as modified shall read as follows:

"VI.

I give and bequeath to my nephew Jacob Lipman, of Milwaukee, Wisconsin, the sum of Five Thousand Dollars ($5000), and if he shall not survive me, such legacy shall lapse, and in that event I give and bequeath to his wife the sum of Three Thousand Dollars ($3000), but if neither the said Jacob Lipman nor his wife shall survive me, then and only in such event I give and bequeath the sum of One Thousand Dollars ($1000) to each of their surviving children."

In view of the foregoing I hereby revoke all that part of Subdivision Twenty-six of my said will reading as follows:

"2nd. To pay to my nephew Jacob Lipman, of Milwaukee, Wisconsin, the sum of One Thousand Dollars ($1000) per year, payable in quarterly instalments, for and during the remainder of his natural life, such payments to begin

so soon as such legatee shall have received any portion of my estate."

IV.

Subdivision Twenty-six of my said will is hereby further amended so as to require the payment by The Jewish Hospital Association of Milwaukee, Wisconsin, to Mrs. John Clark, of the sum of Four Hundred Dollars ($400) per annum from the date of my death, so that the first paragraph of said Subdivision Twenty-six, as amended by this codicil, shall read as follows:

"XXVI.

All of the rest, residue and remainder of my estate, of every name, nature and description, owned or possessed by me at the time of my decease, I give, will, bequeath and devise unto The Jewish Hospital Association of Milwaukee, Wisconsin, and the whole of the estate so willed shall become an endowment fund, and only the interest or return thereon shall be used for the purpose of said institution. This legacy is upon the express condition that said The Jewish Hospital Association of Milwaukee, Wisconsin, before receiving any part or portion of such estate, shall deliver to the legal representatives of my estate an agreement in writing, binding itself:

To pay to Mrs. John Clark, formerly of Waverly, Iowa, now residing at Dubuque, the sum of Four Hundred Dollars ($400) per year from and after the date of my death, and for and during the remainder of her natural life, payable in quarterly instalments of One Hundred Dollars ($100) each, in advance, but the first payment may be made thirty (30) days after my will has been admitted to

probate and the Executors have qualified, and such first payment shall include all sums then due and payable as above set forth."

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal on this Eleventh day of July, in the year One Thousand Nine Hundred and Seventeen.

A. SLIMMER (Seal)

In the presence of us and in the presence of each of us, the foregoing instrument was signed by Abraham Slimmer, on this Eleventh day of July, 1917, and the said Abraham Slimmer thereupon declared said instrument to be his second codicil to his last will and testament, and requested us to witness the execution thereof which we now do at the time of such execution and in his presence and in the presence of each other.

CHARLES BECHHOEFER residing at St. Paul, Minnesota.
N. G. LICHTSCHEIDL residing at St. Paul, Minnesota.
WARREN NEWCOME residing at St. Paul, Minnesota.

CERTIFICATE OF PROBATE.

STATE OF MINNESOTA, COUNTY OF RAMSEY. ss.
Probate Court.

In the Matter of the Estate of Abraham Slimmer, Deceased.

Be It Remembered, That the Last Will and Testament of Abraham Slimmer, late of said County of Ramsey, deceased, bearing date the Third day of May, 1916, and being the annexed written instrument and the codicils annexed thereto dated respectively the Twelfth day of January, 1917, and the Eleventh day of July, 1917, were duly proved and allowed before the Probate Court in and for the County of Ramsey aforesaid, according to law, as and for the Last Will and Testament of said Abraham Slimmer, deceased, which said Last Will and Testament is recorded and the examination taken thereon filed in this office.

In Testimony Whereof, The Judge of the Probate Court of said County has hereunto set his hand and affixed the seal of the said Court at Saint Paul in said County, this Eighth day of October, A. D. 1917.

E. W. BAZILLE,
Judge of Probate.

(Seal of Probate Court)

STATE OF MINNESOTA, COUNTY OF RAMSEY.

In Probate Court.

In the Matter of the Estate of Abraham Slimmer, Deceased.

To the Honorable, the Judge of Probate of said Ramsey County:

The Petition of Abraham Slimmer and Charles Bechhoefer, of St. Paul, in the County of Ramsey, State of Minnesota, respectfully shows that your petitioners are the Executors named in the last will and testament of the above named decedent, and that said will is herewith deposited for probate; that said deceased departed this life at the City of Dubuque, in the County of Dubuque, State of Iowa, on the 15th day of August, 1917, and that said deceased was at or immediately previous to his death, a resident and inhabitant of said County of Ramsey, State of Minnesota, and possessed of personal property in the County of Ramsey, State of Minnesota. The names, ages and places of residence of the heirs, legatees and devisees of the decedent, so far as known to your petitioners, are as follows:

Name	Age	Relationship	Residence
Rosa Salinger Fischel,	Over 21,	Niece,	Chicago, Ill.
Aline Bing,	Over 21,	Niece,	Chicago, Ill.
Edward Slimmer,	Over 21,	Nephew,	Chicago, Ill.
Clara Hirsch Weiss,	Over 21,	Grandniece,	Chicago, Ill.
Isaac Hirsch,	Over 21,	Grandnephew,	Chicago, Ill.
Pauline Schimmelpfennig,	Over 21,	Grandniece,	Chicago, Ill.

William Lipman, Over 21, Nephew, Milwaukee, Wis.
Leon Loser, Over 21, Nephew, Denver, Colorado.
Julius Schlimmer, Over 21, Nephew, Obersitzko, Germany.
Max Cohn, Over 21, Grandnephew, Chicago, Ill.
Mrs. Isador Karger, Over 21, Niece, Milwaukee, Wis.
Leopold Karger, Over 21, Nephew, Milwaukee, Wis.
Jacob Lipman, Over 21, Nephew, Milwaukee, Wis.
Joseph F. Grawe, Over 21, Friend, Waverly, Iowa.
Jacob Schlimmer, Over 21, Brother, Obersitzko, Germany.
Louis Schlimmer, Over 21, Nephew, Chicago, Ill.
Jacob Schlimmer, Over 21, Nephew, Chicago, Ill.
Solomon Slimmer, Over 21, Nephew, South St. Paul, Minn.
Benjamin I. Salinger, Over 21, Nephew, Caroll, Iowa.
Solomon Karger, Over 21, Nephew, Milwaukee, Wis.
David Karger, Over 21, Nephew, Milwaukee, Wis.
Max Karger, Over 21, Nephew, Milwaukee, Wis.
Julius Karger, Over 21, Nephew, Milwaukee, Wis.
Marcus Drisner, Over 21, Nephew, Austin, Minn.
Adolph Lipman, Over 21, Nephew, Milwaukee, Wis.
Mrs. John Clark, Over 21, Friend, Dubuque, Iowa.
Dr. J. J. Rowan, Over 21, Friend, Dubuque, Iowa.
Home of Aged Jews, 62d St. and Drexel Ave., Chicago, Ill.
Jewish Farm School, Doylestown, Pennsylvania.
Jewish Orphan Asylum, Cleveland, Ohio.
Moses Montefiore Kecher Home for Aged and Infirm Israelites, Cleveland, Oho.
Piney Woods Country Life School, Braxton, Mississippi.
Martha Washington Home, Wauwatosa, Milwaukee County, Wisconsin.
Home for Destitute Crippled Children, Chicago, Illinois.
The Jewish Consumptive Relief Association of California, Los Angeles, California.

The Hebrew Orphans Home, Atlanta, Georgia.
The Jewish Home for the Aged, St. Paul, Minnesota.
The Home of the Aged, Des Moines, Iowa.
Jewish Consumptive Relief Society, Denver, Colorado.
The Home for the Friendless, St. Paul, Minnesota.
The Home for the Aged and Infirm Poor, St. Paul, Minnesota.
The Humane Society, of the City of Dubuque, Dubuque, Iowa.
The National Jewish Hospital for Consumptives, Denver, Colorado.
The Jewish Hospital Association, of Milwaukee, Milwaukee, Wisconsin.
Wise Memorial Hospital, Omaha, Nebraska.

The probable value and character of the property of the estate, real and personal, is as follows:

Personal property of the value of Five Hundred Thousand Dollars ($500,000). The Decedent left no real property, so far as known to your petitioners.

Your petitioners, who reside in the City of St. Paul, aforesaid, are named in said will as Executors, and your petitioners pray that said will be proved and letters testamental be granted on said estate to your petitioners, and we do hereby signify to the Probate Court of the County of Ramsey, State of Minnesota, our acceptance of the trust of Executors of the last will and testament of Abraham Slimmer, deceased, mentioned in this petition.

Dated this 21st day of August, 1917.

ABRAHAM SLIMMER.
CHARLES BECHHOEFER.

STATE OF MINNESOTA, COUNTY OF RAMSEY. ss.

Abraham Slimmer and Charles Bechhoefer, being duly sworn depose and say that they are the petitioners named in the foregoing petition, and that they have read the foregoing petition and know the contents thereof, and that the same is true except as to those matters therein stated on information and belief, and as to those matters, they believe it to be true.

ABRAHAM SLIMMER.
CHARLES BECHHOEFER.

Subscribed and sworn to before me this 21st day of August, 1917.

W. D. LANE,
(Seal) Notary Public, Dakota County, Minn.
My commission expires Dec. 7, 1918.
(Endorsed) Filed Aug. 21, 1917. F. W. Gosewisch, Clerk. By J. A. Roedler, Deputy.

STATE OF MINNESOTA, COUNTY OF RAMSEY, ss.

In Probate Court.

In the Matter of Proving the Alleged Last Will and Testament of Abraham Slimmer, Decedent.

The State of Minnesota to All Whom It May Concern:

Whereas, Charles Bechhoefer and Abraham Slimmer of the City of St. Paul, and State of Minnesota, have delivered to the Probate Court of the County of Ramsey, an instrument in writing purporting to be the Last Will and

Testament and codicils of Abraham Slimmer, late of Ramsey County, Minnesota, decedent, and filed therewith their petition to said Probate Court, praying that the said instrument may be proved and admitted to probate and that Letters testamentary be granted thereon to said petitioners.

It is ordered, That said petition be heard and that all persons interested in said matter be cited and required to appear before this Court on Monday, the 17th day of September, 1917, at 10 o'clock A. M. or as soon thereafter as said matter can be heard, at the Probate Court Rooms, in the Court House in the City of St. Paul, in said County, and show cause, if any they have, why said petition should not be granted and said Will admitted to probate and that this citation be served by the publication thereof in the St. Paul Dispatch, according to law, and by mailing a copy of this citation at least 14 days before said day of hearing, to each of the heirs, devisees, legatees of said decedent whose names and addresses are known and appear from the files of this Court.

Witness the Judge of said Court, this 22nd day of August, A. D. 1917.

E. W. BAZILLE,

(Seal of Probate Court.) Judge of Probate.

Attest: F. W. Gosewisch, Clerk of Probate.

Chas. Bechhoefer, Attorney.

STATE OF MINNESOTA, COUNTY OF RAMSEY.

In Probate Court.

In the Matter of the Estate of Abraham Slimmer, Deceased.

AFFIDAVIT OF MAILING COPIES OF CITATION FOR HEARING PROOFS OF WILL.

STATE OF MINNESOTA, COUNTY OF RAMSEY. ss.

Harold O. Summerfield, being duly sworn, on oath, says that at the City of St. Paul, in the County of Ramsey, State of Minnesota, on the Twenty-eighth day of August, 1917, at a proper mailing place of the United States Post-Office, affiant mailed to each of the legatees and beneficiaries named in the will of the above named decedent, and all known heirs-at-law of said decedent, a true and correct copy of the citation to hear proofs of will in the above entitled matter, of which a printed copy is hereto attached. Said copies were mailed to said legatees, beneficiaries and heirs, to their last known address, so far as could be ascertained after due and diligent inquiry as to the correctness thereof. Each copy was securely sealed in an envelope and the postage thereon was fully prepaid before mailing, and said envelopes were addressed respectively to said heirs, legatees and beneficiaries to their said respective places of residence, as follows:

Rosa Salinger Fischel, 6245 South Wood Street, Chicago, Illinois.

Aline Bing, 4919 Calumet Avenue, Chicago, Illinois.

Edward Slimmer, 3243 Warren Avenue, Chicago, Illinois.

Clara Hirsch Weiss, 2901 North Racine Avenue, Chicago, Illinois.

Isaac Hirsch, 6045 Eberhart Avenue, Chicago, Illinois.

Pauline Schimmelpfennig, 930 Sunnyside Avenue, Chicago, Illinois.

William Lipman, 247 Fourteenth Street, Milwaukee, Wisconsin.

Leon Loser, 1757 Welton, Denver, Colorado.

Julius Schlimmer, Obersitzko, German.

Max Cohn, Care Adam Bros., Old Colony Building, Chicago, Illinois.

Mrs. Isador Karger, 693 Nineteenth Street, Milwaukee, Wisconsin.

Leopold Karger, 332 Twenty-seventh Street, Milwaukee, Wisconsin.

Jacob Lipman, 485 Twenty-eighth Street, Milwaukee, Wisconsin.

Joseph F. Grawe, The Bremer County Independent, Waverly, Iowa.

Jacob Schlimmer, Obersitzko, Germany.

Louis Slimmer, 5728 South Park Avenue, Chicago, Illinois.

Jacob Slimmer, 4758 South Michigan Avenue, Chicago, Illinois.

Solomon Slimmer, South St. Paul, Minnesota.

Benjamin I. Salinger, Carroll, Iowa.

Solomon Karger, 1925 Cedar Street, Milwaukee, Wisconsin.

David Karger, 2528 Wells Street, Milwaukee, Wisconsin.

Max Karger, 2528 Wells Street, Milwaukee, Wisconsin.

Julius Karger, 1925 Cedar Street, Milwaukee, Wisconsin.

Marcus Drisner, Austin, Minnesota.

Adolph Lipman, 3124 State Street, Milwaukee, Wisconsin.

Mrs. John Clark, Dubuque, Iowa.

Dr. J. J. Rowan, Dubuque, Iowa.

Home of Aged Jews, Sixty-second Street and Drexel Avenue, Chicago, Illinois.

Jewish Farm School, Doylestown, Pennsylvania.

Jewish Orphan Asylum, Cleveland, Ohio.

Moses Montefiore Kesher Home for Aged and Infirm Israelites, Cleveland, Ohio.

Piney Woods Country Life School, Braxton, Mississippi.

The Martha Washington Home, (Milwaukee County) Wauwatosa, Wisconsin.

Home for Destitute Crippled Children, Chicago, Illinois.

The Jewish Consumptives Relief Association of California, Los Angeles, California.

The Hebrew Orphans Home, Atlanta, Georgia.

The Jewish Home for the Aged, St. Paul, Minnesota.

The Home of the Aged, Des Moines, Iowa.

Jewish Consumptives Relief Society, Denver, Colorado.

The Home for the Friendless, St. Paul, Minnesota.

The Home for the Aged and Infirm Poor, St. Paul, Minnesota.

The Humane Society of the City of Dubuque, Dubuque, Iowa.

The National Jewish Hospital for Consumptives, Denver, Colorado.

The Jewish Hospital Association of Milwaukee, Milwaukee, Wisconsin.

Wise Memorial Hospital, Omaha, Nebraska.

HAROLD O. SUMMERFIELD.

Subscribed and sworn to before me this 28th day of August, 1917.

PAUL BREMER,
(Notarial Seal) Notary Public,
Ramsey County, Minnesota.

My commission expires Sept. 7, 1917.

(Copy of citation for hearing proofs of will attached to this affidavit.)

ST. PAUL DISPATCH AFFIDAVIT OF PUBLICATION.

STATE OF MINNESOTA,
County of Ramsey. ss.

J. Woollen, being first duly sworn, on oath deposes and says:

That she is the clerk of The Dispatch Printing Company, a corporation; that the said The Dispatch Printing Company is now, and for more than one year last past has been, the proprietor and publisher of the St. Paul Dispatch; that the hereto attached printed copy of Notice in the Matter of Proving the Alleged Last Will and Testament of Abraham Slimmer, Decedent, was cut from the columns of the said St. Paul Dispatch, and was published therein for 3 successive weeks on Thursday of each week; that the first publication thereof was made on the 23rd day of August, 1917, and that the last publication thereof was made on the 6th day of September, 1917.

Deponent further says that the said St. Paul Dispatch is, and for more than one year last past has been, a collec-

tion of reading matter in columns and sheet form, the matter consisting of general and local news, comments and miscellaneous and literary items, and during all said time was, and now is, printed and published daily at an established office, to-wit: at Fourth and Minnesota Streets, in the City of St. Paul, in the County of Ramsey and State of Minnesota; the said office during all the time aforesaid being, and now is, equipped with all the necessary materials for conducting a newspaper, and with skilled workmen for preparing and printing in whole the said St. Paul Dispatch, and that said St. Paul Dispatch during all said time was, and now is, issued at and generally circulated in said City of St. Paul.

Deponent further says that the said St. Paul Dispatch has been printed in whole in the English language, and published regularly and continuously daily in said County of Ramsey, for more than one year next preceding the date of the first publication of the said notice, and during the publication thereof, and during all said times, it has consisted and now consists of more than four pages of five columns each, each column being not less than seventeen and three-fourths inches long, and that the proprietor and publisher of said St. Paul Dispatch prints, publishes and delivers, and during all the time aforesaid has printed, published and delivered at each regular issue thereof, more than two hundred and forty complete copies of said St. Paul Dispatch to paying subscribers; that the said St. Paul Dispatch has not been during any of the time aforesaid, nor is now, a duplicate of any other newspaper, and has not been during said time, nor is it now, made up of patents, or plates and patents and advertisements; that all the foregoing conditions have existed for more than one year last

past; that the publishers of said St. Paul Dispatch have filed with the County Auditor of said Ramsey County an affidavit, complying in all respects with the requirements of Sections 5515 and 5516 of Revised Laws of the State of Minnesota for the year 1906.

J. WOOLLEN.

Subscribed and sworn to before me, this 7th day of September, 1917.

B. BASSETT,
Notary Public,
Ramsey County, Minn.

(Notarial Seal)

My commission expires Nov. 13, 1923.

(Copy of citation for hearing proofs of will attached to this affidavit.)

STATE OF MINNESOTA, COUNTY OF RAMSEY.

In Probate Court, Special Term October 8, 1917.

In the Matter of the Estate of Abraham Slimmer, Deceased.

Pursuant to the order of this Court, made in the above entitled matter on the Twenty-second day of August, 1917, the hearing of the proofs of that certain instrument bearing date the Third day of May, 1916, purporting to be the last will and testament of Abraham Slimmer, Deceased, and of those certain instruments attached to said will, dated respectively the Twelfth day of January, 1917, and the Eleventh day of July, 1917, purporting to be the first and second codicils to said will of Abraham Slimmer, Deceased, came on, on the Seventeenth day of September,

1917, and at said time Leon Loser, a legatee, was given until the Eighth day of October, 1917, to file objections to the validity of said will, if he shall determine so to do, and said Leon Loser having advised the Court that he does not intend to object to the validity of said will and codicils or to the admission of the same to probate, and will not file any objection thereto, and it appearing to the satisfaction of the Court that the notice directed in the order aforesaid to be given has been given, thereupon J. J. Rowan, Jr., and W. S. Ludwick, the subscribing witnesses to said will, and James F. Ryan, one of the subscribing witnesses to said first codicil, and Warren Newcome, one of the subscribing witnesses to the said second codicil, were duly sworn and examined on behalf of the proponent thereof, their testimony reduced to writing, subscribed by them and filed. And the Court, after a full hearing and examination of the testimony in said matter, finds and determines that said Abraham Slimmer died on the Fifteenth day of August, 1917, testate, in the County of Dubuque, State of Iowa, and that he was at the time of his death a resident of the County of Ramsey, State of Minnesota, and left assets and property in said County of Ramsey, State of Minnesota; that said instrument and codicils thereto offered for probate as and for the last will and testament of said deceased, were duly executed as his last will and testament by said testator according to law; that said testator at the time of executing the same was of sound mind, of lawful age and under no restraint, and that the same are valid and genuine; and no adverse appearance or objection being made;

Now, Therefore, It Is Ordered, Adjudged and Decreed that said instrument and codicils thereto be and hereby

are established and allowed as the last will and testament of said Abraham Slimmer, Deceased, and that the same are hereby admitted to probate.

Ordered further that said last will and testament and codicils thereto, with a certificate of the probate thereof, be recorded.

By the Court:

E. W. BAZILLE,

(Seal) Judge of Probate.

STATE OF MINNESOTA,

County of Ramsey. ss.

The last will of Abraham Slimmer, deceased, having been proved and recorded in the Probate Court of the County of Ramsey, Abraham Slimmer and Charles Bechhoefer, who are named therein as such, are hereby appointed executors.

Witness, Hon. Edmund W. Bazille, Judge of the Probate Court of the County of Ramsey, and the Seal of the Court affixed, the 8th day of October, A. D. 1917.

By the Court:

EDMUND W. BAZILLE,

(Seal of Probate Court) Judge of Probate,

Ramsey County, Minnesota.

STATE OF MINNESOTA, COUNTY OF RAMSEY.

In Probate Court.

In the Matter of the Estate of Abraham Slimmer, Deceased.

NOTICE OF APPEAL.

Notice is Hereby Given that Adolph Lipman hereby appeals to the District Court of Ramsey County, Minnesota, from the order of the Probate Court of Ramsey County, Minnesota, made on the 8th day of October, 1917, admitting to probate a document alleged to be the last will and testament of said deceased.

Dated November 6th, 1917.

BUTLER, MITCHELL & HOKE,
Attorneys for Adolph Lipman, Appellant,
1006 Merchants National Bank Bldg.,
St. Paul, Minnesota.

STATE OF MINNESOTA, COUNTY OF RAMSEY.
In Probate Court.

In the Matter of the Estate of Abraham Slimmer, Deceased.

NOTICE OF APPEAL.

Notice Is Hereby Given that Adolph Lipman hereby appeals to the District Court of Ramsey County, Minnesota, from the order of the Probate Court of Ramsey County, Minnesota, made on the 8th day of October, 1917, appointing Abraham Slimmer and Charles Bechhoefer executors of the last will and testament of said deceased, and fixing the amount of their bond.

Dated November 6th, 1917.

BUTLER, MITCHELL & HOKE,
Attorneys for Adolph Lipman, Appellant,
1006 Merchants National Bank Bldg.,
St. Paul, Minnesota.

12.

Office Supreme Court, U. S.
APR 19 1918
JAMES D. MAHER,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No.

STATE OF IOWA, PLAINTIFF,

vs.

ABRAHAM SLIMMER, JR., CHARLES BECHHOEFER, ADOLPH LIPMAN, AND THE STATE OF MINNESOTA, DEFENDANTS.

BRIEF AND ARGUMENT FOR COMPLAINANT IN SUPPORT OF MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

H. M. HAVNER,
Attorney General of the State of Iowa.
BURTON SWEET,
Counsel for Complainant.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No.

STATE OF IOWA, PLAINTIFF,

vs.

ABRAHAM SLIMMER, JR., CHARLES BECHHOEFER, ADOLPH LIPMAN, AND THE STATE OF MINNESOTA, DEFENDANTS.

BRIEF AND ARGUMENT ON BEHALF OF THE COMPLAINANT IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

Statement.

The claim of the plaintiff is the right to file the bill of complaint, which bill alleges that Abraham Slimmer, Sr., died a resident of and domiciled in the State of Iowa, and had been a resident of said State for many years. That at the time of his death, and for a long time prior thereto, he

had owned about $550,000.00 worth of personal property. That the property consisted of moneys and credits.

That the said Abraham Slimmer, intending and purposing to cheat and defraud the State of Iowa out of the taxes which were lawfully assessable against said property under the laws of the State of Iowa, with the defendants Beckhoefer and Slimmer, and as a means of accomplishing his said purpose conspired with these defendants to open the administration of his estate in the State of Minnesota, and to probate his will in the State of Minnesota, and to take his said will and the remainder of his property out of the State of Iowa for the purpose of probating it in the State of Minnesota.

PLAINTIFF ALLEGES THAT THE DEFENDANTS BECHHOEFER AND SLIMMER ARE BOTH RESIDENTS OF THE STATE OF MINNESOTA.

Plaintiff alleges that there was one $3,000 note and other personal property wrongfully taken by the defendants Abraham Slimmer, Jr., and Charles Bechhoefer out of the State of Iowa, after the death of Abraham Slimmer, Sr.

PLAINTIFF ALLEGES THAT BY REASON OF THE DOMICILE OF SAID ABRAHAM SLIMMER, SR., IN THE STATE OF IOWA, AT THE TIME OF HIS DEATH, ALL OF HIS PROPERTY WAS SUBJECT TO TAXATION BY THE STATE OF IOWA, BOTH AS TO ORDINARY TAXES AND THE INCOME TAX, and that ordinary taxes should have been assessed against said estate for a period of five years preceding the death of Abraham Slimmer.

BUT BY REASON OF THE FRAUD OF ABRAHAM SLIMMER, SR., DECEASED, AND THE DEFENDANTS SLIMMER AND BECHHOEFER, SAID PROPERTY WAS CONCEALED FROM THE TAXING OFFICERS OF THE STATE OF IOWA, AND THE MONEY AND PROPERTY IN IOWA WAS CLANDESTINELY TAKEN FROM THE STATE OF IOWA FOR THE PURPOSE OF CARRYING OUT SAID CONSPIRACY TO CHEAT AND DEFRAUD THE STATE OF IOWA OUT OF THE TAXES JUSTLY DUE HER.

Plaintiff alleges that as a part of said scheme the will of Abraham Slimmer was offered for probate in the State of

Minnesota, and the said defendants Slimmer and Beckhoffer, on the 21st day of August, 1917, procured the appointment by the Probate Court of Ramsay County, Minnesota, of defendant Beckhoffer as special administrator of the estate of said Abraham Slimmer, deceased.

That by the laws of the State of Minnesota, the special administrator is a mere custodian, without power to do anything but hold the property coming into his possession until some other form of administration shall be granted, so that the same shall not be wasted before being turned over to the jurisdiction or court entitled to administer upon and distribute the same.

Plaintiff alleges that the defendants Slimmer and Beckhoffer, on the 21st day of August, 1917, produced and filed in the Probate Court of Ramsay County, State of Minnesota, a paper purporting to be the will and testament of Abraham Slimmer, Sr., and this was done for the purpose of carrying out said scheme to defraud the State of Iowa out of the taxes as above stated. And that the defendants Beckhoffer and Slimmer, falsely claiming and pretending that the deceased Abraham Slimmer, Sr., was domiciled in Ramsay County, in the State of Minnesota, secured an *ex parte* order and decree admitting the said instrument to probate as the last will and testament of Abraham Slimmer, deceased. And in said *ex parte* order a finding was entered by said court, finding that Abraham Slimmer, Sr., was domiciled in said Ramsey County, Minnesota.

The defendant Lipman on the 6th day of November, 1917, took an appeal from said order admitting said will to probate, and by virtue of the laws of the State of Minnesota, by reason of said appeal, said order and finding was set aside.

PLAINTIFF ALLEGES THAT IT HAS NEVER APPEARED IN ANY OF THE PROCEEDINGS IN THE COURTS OF THE STATE OF MINNESOTA AND DOES NOT DESIRE TO SUBMIT ITS CLAIMS TO THE TRIBUNALS OF THE STATE OF MINNESOTA.

The defendant, the State of Minnesota, by reason of the claim of the defendants Slimmer and Beckhoffer, are mak-

ing claim to the right to originally administer upon the estate of the said Abraham Slimmer, deceased.

Plaintiff alleges that it has caused to be appointed one D. E. Malaney, under the laws of the State of Iowa, upon the petition of the treasurer of the State of Iowa, as administrator of the estate of Abraham Slimmer, Sr., in Dubuque County, Iowa, and that letters of administration have been granted to one D. E. Malaney.

(*But plaintiff's allegation shows that the said D. E. Malaney stands only in the representative capacity as far as the collection of the collateral inheritance tax i concerned, and is not a real party in interest.*)

Plaintiff prays that it be adjudged and decreed by this court that for more than five years immediately preceding the death of Abraham Slimmer, deceased, that he was a citizen and resident of and domiciled in the City of Dubuque, in Dubuque County, in the State of Iowa.

2. That his estate consisted of evidence of indebtedness to him, and that no part of his estate was at his death in the State of Minnesota.

3. That the State of Iowa has, and that the State of Minnesota has not, jurisdiction to administer upon and distribute the estate of Abraham Slimmer, deceased.

4. That the plaintiff have such order, judgment or decree as shall be necessary to give effect to its said rights, and to secure the abatement and dismissal of the proceeding herein described, and to insure that such proceedings as shall be necessary to the administration and distribution of said estate shall be had in the State of Iowa, according to its law, AND FOR SUCH OTHER RELIEF AS IN THE CAUSE SHALL TO YOUR HONORS SEEM MEET.

The contention of the plaintiff briefly stated is as follows:

I.

Abraham Slimmer, Sr., was at the time of his death, and for five years prior thereto, a resident and domiciled in the State of Iowa.

II.

An original probate and principal administration must be had in testator's domicil.

III.

That Iowa has an interest in having administration or probate had in Iowa.

a. Iowa would be entitled to such taxes as would be levied on the estate during the course of administration.

b. Iowa could levy on the estate back taxes for a period of five years, to which they are entitled by reason of the fraud of Abraham Slimmer, Sr., deceased, and the defendants Abraham Slimmer, Jr., and Beehhoefer.

c. Iowa could collect the collateral inheritance taxes due her through said administration in the courts of Iowa.

IV.

Administration is necessary to be had in Iowa, because the levy of taxes cannot be had or enforced for the five-year period or the period during administration, unless the levy is made and the collection of the taxes had in the manner prescribed by statute, none of these rights can be enforced if civil suit will not lie for that purpose.

V.

Even assuming that Minnesota would entertain these claims in its courts, they would grant them only upon a finding that Abraham Slimmer, Senior, was domiciled in Iowa at the time of his death and five years prior thereto, and the sovereign State of Iowa should not be compelled to litigate these questions in a possibly hostile forum.

VI.

The plaintiff in this action is a sovereign State and the defendants, Beckhoefer and Slimmer, are residents and citi-

zens of the State of Minnesota, and the Constitution and laws of the United States give to a sovereign State under such circumstances the right to have any such controversy decided by an original action in this court.

VII.

As shown upon the face of the bill, all necessary parties have been made parties to the action.

BRIEF.

1. The plaintiff in this case is a sovereign State and the defendants, Beehhoefer and Slimmer, Junior, are residents and citizens of the State of Minnesota, and the constitution and laws of the United States give to a sovereign State, under such circumstances, the right to have any such controversy decided by an original action in this court.

In all cases affecting ambassadors, other public ministers and consuls, AND THOSE IN WHICH A STATE SHALL BE A PARTY, the Supreme Court shall have original jurisdiction.

Article 3, section 2, subdivision 2, Constitution of the United States.

Congress has also provided that the Supreme Court shall have original jurisdiction in all controversies of a civil nature between a State and the citizens of another State.

Section 1210, U. S. Compiled Stat., 1916.

It reads as follows:

> "The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive, jurisdiction. And it shall have exclusively all such jurisdiction of suits or proceed-

> ings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction, of all suits brought by ambassadors, or other public ministers, or in which a consul or vice consul is a party."

The original jurisdiction of the Supreme Court of the United States depends ENTIRELY UPON THE CHARACTER OF THE PARTIES, AND NOT UPON THE NATURE OF THE ACTION, while appellate jurisdiction of said court depends upon the nature of the action rather than upon the character of the said parties.

California *vs.* Southern Pacific Ry. Co., 157 U. S., 229.

11 Cyc., subdivision C, page 912.

2. Federal courts will entertain a bill in equity between ordinary citizens with reference to where the testator's domicile was at the time of his death.

Harrison *vs.* Nixon, 34 U. S., 483.

In speaking with reference to this matter at page 503 in the above case the court said:

> "No one can doubt, if a testator born and domiciled in England during his whole life, should, by his will, give his personal estate to his heir-at-law, that the *descriptio personæ* would have reference to, and be governed by, the import of the terms in the sense of the laws of England. The import of them might be very different, if the testator were born and domiciled in France, in Louisiana, in Pennsylvania, or in Massachusetts. In short, a will of personalty speaks according to the laws of the testator's domicile, where there are no other circumstances to control their application; and to raise the question, what the testator means, we must first ascertain, what was his domicile, and whether he had reference to the laws of that place, or to the laws of any foreign country. Now, the very

gist of the present controversy turns upon the point, who were the person or persons, intended to be designated by the testator, under the appellation of 'heir-at-law'. If, at the time of making his will, and at his death, he was domiciled in England, and had a reference to its laws, the designation might indicate a very different person or persons, from what might be the case (we do not say what is the case), if, at the time of making his will, and of his death, he was domiciled in Pennsylvania. In order to raise the question of the true interpretation and designation, it seems to us indispensable, that the country by whose laws his will is to be interpreted, should be first ascertained; and then the inquiry is naturally presented, what the provisions of those laws are.

"If this be the true posture of the present case, then the bill should allege all the material facts, upon which the plaintiff's title depends; and the final judgment of the court must be given, so as to put them in contestation in a proper and regular manner. And we do not perceive, how the court can dispose of this cause without ascertaining where the testator's domicile was, at the time of his making his will, and at the time of his death; and if so, then there ought to be suitable averments in the bill to put these matters in issue."

IF THE FEDERAL COURTS WILL ENTERTAIN THE QUESTION AS TO WHERE THE MAN WAS DOMICILED AT THE TIME OF HIS DEATH IN AN ORDINARY ACTION BETWEEN CITIZENS, WHEN IT BECOMES MATERIAL, IF A SOVEREIGN STATE IS THE PARTY PLAINTIFF AND THE DEFENDANT ANOTHER SOVEREIGN STATE OR THE RESIDENT OF ANOTHER SOVEREIGN STATE, THEN THE SOVEREIGN STATE THAT IS PLAINTIFF HAS THE RIGHT TO HAVE SUCH QUESTION DETERMINED IN AN ORIGINAL ACTION IN THIS COURT.

3. The original probate and principal administration must be had in testator's domicile.

Schouler on Wills, 5th edition, page 1130.

Administration in the last domicile of the deceased is the principal; other administrations are ancillary.

Schouler on Wills, section 1157, 5th edition.

Regarding the subject of administration from an interstate and international standpoint, wherever authority to administer the estate of one deceased, testate or intestate, is granted in two or more jurisdictions, the principal administration and appointment must be that where the deceased had his last domicile, and administration of appointment granted elsewhere because of local property or estates, is ancillary merely, and this largely because as an international as well as interstate doctrine it is usually conceded that the domicile of the owner of personal property governs regarding the right of succession thereto, whether such owner died testate or intestate, or, to cite the broader, fundamental maxim, *"mobilia sequenter personan"*.

Schouler on Wills, page 1130, 5th edition.
Byers *vs.* McCauley, 149 U. S., 608.

In England the last domicile of the deceased is firmly respected in all matters of administration as to personalty. "All questions of testacy or intestacy", observes Lord Chancellor Cranworth in a modern case, "belong to the court of the domicile".

Schouler on Wills, 5th edition, page 907, section 1169, and Schouler on Wills, 5th edition, page 1132.

The probate of a will, in the first instance, should be made in the place of the testator's domicile at the time of his death.

McDonnell vs. Farrow, 132 Ala., 227; 31 So., 475.
Corrigan vs. Jones, 14 Colo., 311; 23 Pac., 913.
Godwin vs. Godwin, 129 Ga., 67; 58 S. E., 652.
Thompson on Wills, page 425.

The courts of the testator's domicile are ordinarily the proper tribunals to determine a contest over the construction or validity of a will of personal property, and their decisions are binding upon the parties to the suit with respect to all personal property wherever located.

Gaines's Succession, 45 La. Ann., 1237; 14 So., 233.
Dalrymple vs. Gamble, 68 Md., 523; 13 Atl., 156.
Lincoln vs. Perry, 149 Mass., 368; 4 L. R. A., 215; 21 N. E., 671.
Pratt vs. Douglas, 38 N. J. Eq., 516.
Wharton on the Conflict of Law, 3d. ed., page 1367.

It has been regarded as not indispensable to the proof of a foreign will, in the courts of another place than that of the testator's domicile, that the foreign probate should be recorded in the domestic probate court; though it must be shown in evidence that the will has been duly admitted to probate in the proper tribunal of the testator's domicile.

Townsend vs. Moore, 8 Jones Law, 187.
Jemison vs. Smith, 37 Ala., 185. See
Hoyradt vs. Gas Co., 184 Penn St., 251.
Chadwick's Will, 85 A., 266; 80 N. J. Eq., 471.
Schouler on Wills, etc. (5th ed.), page 1135.

4. Iowa has an interest in having administration and probate of the estate had in Iowa.

(A.)

It would require twelve months in which to administer the estate, and any taxes which would accrue or would be levied by reason of such administration would be due the State of Iowa.

Code of Iowa, 1897, section 3358.
Code of Iowa, 1897, section 1313, section 1316, and section 1320.

(B.)

Iowa could levy against the administrator of the estate of Abraham Slimmer, Senior, back taxes for a period of five years, for the reason that Abraham Slimmer, Senior, as alleged in the bill, was a resident of the State of Iowa.

Section 1385-*b*, Supp. to Code of Iowa, 1913.

THERE COULD BE NO ASSESSMENT IF THE ADMINISTRATION HAD IN IOWA IS ANCILLARY ONLY, FOR THE POWERS OF AN ADMINISTRATOR UNDER ANCILLARY ADMINISTRATION ARE SPECIFICALLY DEFINED BY THE LAWS OF IOWA.

Code of Iowa, section 3308.

IOWA COULD COLLECT THROUGH SUCH ADMINISTRATION, COLLATERAL INHERITANCE TAXES DUE HER FROM THE ESTATE OF ABRAHAM SLIMMER, SENIOR.

Under section 1481-*a* of the Code of Iowa, supplement of 1913, the estate of Abraham Slimmer is liable for the collateral inheritance tax, whether his property was in or outside of the State of Iowa at the time of his death. The section is as follows:

> "The estates of all deceased persons, whether they be inhabitants of this State or not, and whether such estate consists of real, personal or mixed property, tangible or intangible, and any interest in or income from, any such estate or property, which property is, at the death of the decedent owner, within this State or subject thereto, or thereafter, for the purpose of distribution, is brought within this State and becomes subject to the jurisdiction of the courts of this State, OR THE PROPERTY OF ANY DECEDENT DOMICILED WITHIN THIS STATE AT THE TIME OF THE DEATH OF SUCH DECEDENT, EVEN THOUGH THE PROPERTY OF SUCH DECEDENT SO DOMICILED WAS SITUATED OUTSIDE OF THIS STATE, ETC."

5. Assuming that Minnesota would entertain the claims of the plaintiff in its courts, they would allow them only upon

a finding that Abraham Slimmer, Senior, was domiciled in Iowa at the time of his death and for a period of five years prior thereto, and the sovereign State of Iowa should not be compelled to litigate these questions in a possibly hostile forum.

The preservation of the sovereignty of a State seems to be a ground for the Supreme Court of the United States taking original jurisdiction.

Georgia vs. Tennessee Copper Company, 206 U. S., 230.

The power of taxation is an incident of sovereignty and not a property right.

McCulloch vs. Maryland, 4 Wheat., 316, 428.
Bank vs. Billings, 4 Peters, 514.
Case of Freight Tax, 15 Wall., 278.

The reasons why controversies between States and citizens of other States should be prosecuted in the Supreme Court of the United States is given in

Chisholm vs. Georgia, 2 U. S., 402.

After describing the different classes of cases that come within the judicial power of the United States, it is said in *Chisholm vs. Georgia, supra*, at page 475:

> "To controversies between a State and citizens of another State; because, in case a State (that is, all the citizens of it) has demands against some citizens of another State, it is better that she should prosecute their demands in a national court, than in a court of the State to which those citizens belong; the danger of irritation and criminations arising from apprehensions and the suspicions of partiality, being thereby obviated. Because, in cases where some citizens of one State have demands against all the citizens of another State, the cause of liberty and the rights of men forbid, that the latter should be the sole judges of the justice due to the latter; and true republican government requires, that free and equal citizens should have free, fair and equal justice."

In *Wisconsin vs. Pelican Ins. Co.*, 127 U. S., 265, it is said at page 289:

> "The object of vesting in the courts of the United States jurisdiction of suits by one State against the citizens of another was to enable such controversies to be determined by a national tribunal, and thereby to avoid the partiality, or suspicion of partiality, which might exist if the plaintiff State were compelled to resort to the courts of the State of which the defendants were citizens."

The object of vesting in the courts of the United States jurisdiction of suits between States and citizens of other States was to provide an impartial tribunal in which to try the issues.

Wisconsin vs. Pelican Ins. Co., 127 U. S., 265.

6. Administration is necessary to be had in Iowa because the levy of the taxes cannot be had or enforced against the estate of Abraham Slimmer, Senior, unless the levy and the collection of the taxes is made in the manner prescribed by statute.

Plymouth Co. *vs.* Moore, 114 Iowa, page 700.

Section 1452-*a* does not authorize a suit to collect taxes which are not shown upon the tax list in the office of the county treasurer, for the only suit authorized is "for the collection of taxes from any person, persons, firm or corporation AS SHOWN BY THE TAX LIST IN HIS OFFICE".

Section 1452-*a*, Code of Iowa, Supplement of 1913.

7. Heirs and legatees are not joined, because they are not indispensable parties, so that neither their absence nor joinder can oust jurisdiction.

Collateral Inheritance—Heirs Not Indispensable Parties.

The tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not

until it has yielded its contribution to the State that it becomes the property of the legatee.

U. S. vs. Perkins, 163 U. S., 625.

Petersen vs. State of Iowa, Sup. Ct. Rep., Vol. 38, page 109 (Jan. 1, 1918).

In *U. S. vs. Perkins, supra*, it is said at page 628:

> "In this view, the so-called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases; a declaration that, in the exercise of that power, he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain, but subject to a condition that the State has a right to impose. Certainly, if it be true that the right of testamentary disposition is purely statutory, the State has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee."

In *Petersen vs. Iowa, supra*, it is said:

> "The duty to pay on such property which precedes and accompanies the right of such foreign legatees, was not a burden upon their rights to remove their property, as such right of property on their part was dependent upon the payment and could not and did not arise until the payment was made."

Where, in a suit in the federal courts for an injunction against strikers, the court's jurisdiction depends on the residence of the parties, a party interested in the subject-matter need not be made a party to the suit where his rejoinder would oust the court of jurisdiction, provided a final decree against the parties before the court, consistent with equity and good conscience, can be made.

Ex parte Haggerty, 124 Fed., 441.

To a bill in a Federal court seeking to establish a trust in favor of complainant corporation in money alleged, in effect, to have been embezzled from it by one of its officers, and deposited by him with defendants, by whom it is still held, such officer is not an indispensable party, but, if joined, is only a formal party, whose presence will not defeat the jurisdiction of the court, although he is a citizen of the same State as complainant; the requisite diversity of citizenship being shown between complainants and the other defendants.

White Swan Mines Co. vs. Balliet, 134 Fed., 1004.

The jurisdiction of a Federal court is not defeated in a suit brought only against defendants who are citizens of other states than the complainant because the bill discloses that there are other citizens of the same State with complainant who might properly have been made defendants.

International Trust Co. vs. T. B. Townsend Brick & Contracting Co., 95 Fed., 850; 37 C. C. A., 396.

Merely proper or even necessary parties are not required to be joined in a Federal court, where the result would be to defeat its jurisdiction.

Coca-Cola Co. vs. Deacon Brown Bottling Co., 200 Fed., 105.

A Federal court is not required to permit the intervention as defendants of persons not necessary parties, whose presence would oust the court of jurisdiction.

Kaus. vs. American Surety Co. of New York, 199 Fed., 972.

In a suit to foreclose a mechanics' lien on works of an irrigation company, a corporation claimant of the same citizenship as complainant held not an indispensable party defendant, and hence failure to join it did not oust Federal jurisdiction.

Continental & Commercial Trust & Savings Bank vs. Corey Bros. Const. Co., 298 Fed., 976; 126 C. C. A., 64.

The administrator of a deceased heir is a proper, but not necessary party to a suit by the other heirs to construe the will, and need not be joined under equity rule 39 (226 U. S., 659; 33 Sup. Ct., xxix), where his presence would oust the court's jurisdiction.

Thomas vs. Anderson, 223 Fed., 41; 138 C. C. A., 405.

Where a mortgage on land within the district was given by mortgagors who were residents of another district to secure the debt of a third person residing within the district, the latter was not an indispensable party to a suit to foreclose; and hence his residence within the district where complainant also resided was not fatal to the court's jurisdiction.

Barnes vs. Cady, 232 Fed., 318; 146 C. C. A., 366, affirming order (D. C.) Cady *vs.* Barnes, 208 Fed., 359.

8. Malaney, the administrator, appointed in Iowa, is not a necessary party to this action; he is appointed under section 1481-*a* 3, Code of Iowa, Supplement of 1913, upon the application of the treasurer of the State, and stands at most only in a representative capacity.

Code of Iowa, Supplement of 1913, section 1481-A 3.

The facts as set forth in the plaintiff's petition show that the defendants Slimmer, Junior, and Bechhoefer, wrongfully, fraudulently and corruptly removed at least three thousand dollars ($3,000.00) of the property of the estate of the decedent from the state of Iowa after the death of the decedent, and the State of Iowa has such interest in this money as that it can maintain an action against Slimmer, Junior, and Bechhoefer, and the State of Minnesota, with reference to the return of this money to the State of Iowa, and the State of Iowa is the real party in interest with reference to said tax.

See cases cited under division 8 of this brief.

ARGUMENT.

I.

(a) On the allegations of fact contained in the bill there can be no dispute with reference to the facts stated, because this is in the nature of a demurrer to the bill, and the facts as stated in the bill must be taken as admitted. It is, therefore, an admitted fact that Abraham Slimmer, Sr., died a resident of, and domiciled in, the State of Iowa, and had been so domiciled for a period of five years prior to the date of his death.

It must also be taken as true that the defendants Beckhoefer and Slimmer are residents of the State of Minnesota, and that they wrongfully took from the jurisdiction of the sovereign State of Iowa three thousand dollars upon which the State of Iowa had a lien for the collateral inheritance tax of five per cent of the entire estate of Abraham Slimmer, Sr., deceased. There has been delivered to the defendant State of Minnesota, through her courts and the officers representing them, the three thousand dollars wrongfully taken from the State of Iowa, and the State of Minnesota is insisting upon holding the whole of this money.

IT IS THE CLAIM OF THE PLAINTIFF THAT THIS COURT HAS ORIGINAL JURISDICTION WHERE A SOVEREIGN STATE IS A PARTY PLAINTIFF TO THE ACTION AND THE DEFENDANT IS A CITIZEN OF A FOREIGN STATE OR A FOREIGN STATE ITSELF. This court, in the case of California *vs.* The Southern Pacific Railway Company, 157 U. S., 229, said that the original jurisdiction of this court depended entirely upon the character of the parties and not upon the nature of the action. We therefore say that upon the face of the bill we have such parties to this action as confer original jurisdiction upon this court. It was suggested in oral argument by Chief Justice White that we could go to the State of Minnesota and bring the case to this court on appeal, but

we would have no federal question on appeal if we went to the courts of Minnesota and submitted to their jurisdiction. It was also suggested by the Chief Justice that it would unnecessarily burden the docket of this court to assume jurisdiction in cases of this character, but if the controversy is between a sovereign State and between citizens of another sovereign State, or is against another sovereign State, then, under the Constitution and the laws of the United States, the sovereign State has a right to have this court determine the controversy in an original action, and whenever such a condition as that arises the sovereign State cannot be compelled to go into the courts of a sister State to have such controversy determined. The only question to be determined, so far as the question of jurisdiction is concerned, is whether the parties to the action are those that are contemplated by the Constitution and the laws of the United States. We say that such is the situation in the case at bar.

(*b*) The question which is determinative of the case at bar is, Was Abraham Slimmer, Sr., a resident of the State of Iowa at the time of his death?

This court has held in the case of Harrison *vs.* Nixon, that where the question of a man's domicile was important to the determination of his rights in connection with the title to property, or his right of inheritance of property, that question should be determined by the Federal court. It was suggested in oral argument that the case of Harrison *vs.* Nixon was not an original action commenced in this court. We grant that; but it was an action between citizens of different States and commenced in the Federal Circuit Court in the State of Pennsylvania, and if this question was a proper one to be entertained by the Federal courts in an ordinary action between citizens, surely, if a sovereign State is a party plaintiff and the defendant another sovereign State, or a resident of another sovereign State than the sovereign State that is plaintiff, then the sovereign State that is plain-

tiff would have the same right to have this question determined by this court in an original action that two citizens would have in an ordinary action commenced in the inferior courts of the United States.

II.

Iowa has such an interest in this controversy as to permit her to maintain this action. What rights of the sovereign State of Iowa have been violated under the allegations of the bill?

First, under the allegations of the bill, the defendants Bechhoefer and Slimmer wrongfully took from the State of Iowa three thousand dollars and transported the same to the State of Minnesota, together with other personal property, and these three thousand dollars, under the laws of the State of Iowa, were amenable to the claims of the State of Iowa in connection with the inheritance tax. We call the court's attention to section 1481-*a* of the Code of 1913 of the State of Iowa, which, among other things, provides that

> "The estate of a person * * * domiciled within this State at the time of the death of such decedent, even though the property of such decedent so domiciled was situated outside of the State, * * * and which shall pass, by will or by the statutes of this or any other State or country, or by deed, grant, sale, gift or transfer, * * * shall be subject to the tax of five per centum."

This court held in the case of Peterson *vs.* The State of Iowa, which is found in volume 38 of the Supreme Court Reporter, page 109, decided January 1, 1918, that the tax was not upon the property in the ordinary sense of the term, but upon the right to dispose of it, and that not until the property had yielded up to the State its contribution did it become the property of the legatees; in other words, holding, in effect, that when there was property within the jurisdiction of the State it was subject to the claim of the tax.

and if anything was left, whatever that amount might be, could go to the heirs under and by virtue of the terms of the will. We, therefore, say that when Bechhofer and Slimmer took these three thousand dollars from the jurisdiction of the State of Iowa, and took it wrongfully into the State of Minnesota and turned it over to the officers of the courts of Minnesota, that they committed a tort against the State of Iowa, and the State of Iowa is entitled to the return of this money in kind, or else a judgment against Bechhofer and Slimmer for the amount of this money; and if the court will remember, in oral argument counsel admitted, in effect, that this estate was liable for the collateral inheritance tax, and at no place in the argument suggested that the estate was not liable for the tax, but insisted that the sovereign State of Iowa should come to the State of Minnesota and submit her claims to the courts of the State of Minnesota.

The court should remember in this connection that Slimmer and Bechhoefer took the three thousand dollars from Iowa as individuals and before there was any special administrator appointed by the court of Minnesota, and Bechhoefer, who is one of these defendants, was appointed as special administrator at his own request, as presented under the allegations of the bill, and is now holding this money in kind.

In this connection we call the court's attention to the right of the State of Iowa to have the question as to the domicile of Abraham Slimmer, Sr., deceased, determined, because if it is determined in favor of the plaintiff, then the principal administration must be had in Iowa under the laws of the State of Minnesota, the defendant in this action, and the officers of the defendant State, through her courts, would be compelled, as well as the defendants, Bechhoefer and Slimmer, to turn over to the State of Iowa, after the ancillary administration was had in Minnesota, whatever funds were in their hands for administration according to the laws of the State of Iowa, and for assessment as against

such funds of any taxes which might be due the State of Iowa, as set forth in the bill and as referred to in Division four (4) of our brief.

We call the court's attention to the fact that under the laws of the State of Iowa there can be no levy or collection of the taxes unless we have original administration in Iowa, because there can be no such service of notice as is contemplated by section 1374 of the Code of 1897 of the State of Iowa, or section 1385-*a* of the Code of 1913 of the State of Iowa, where assessment may be made by the county auditor on property that has been omitted.

III.

Assuming that the State of Minnesota would entertain the claims of the State of Iowa in its courts, they could not grant them except upon a finding that Abraham Slimmer, Sr., was domiciled in the State of Iowa at the time of his death and for a period of five years prior thereto. This court in the opinion of Chisholm *vs. Georgia*, 2 U. S., 402, said:

> "To controversies between a State and citizens of another State; because, in case a State (that is, all the citizens of it) has demands against some citizens of another State, it is better that she should prosecute their demands in a national court, than in a court of the State to which those citizens belong; the danger of irritation and criminations arising from apprehensions and the suspicions of partiality, being thereby obviated. Because, in cases where some citizens of one State have demands against all the citizens of another State, the cause of liberty and the rights of men forbid, that the latter should be the sole judges of the justice due to the latter; and true republican government requires, that free and equal citizens should have free, fair and equal justice."

In the case of Wisconsin *vs.* The Pelican Insurance Company, 127 U. S. 265, it is said that the object of vesting in

the courts of the United States jurisdiction as to suits between States and citizens of another State was to provide an impartial tribunal in which to try the issues. We are asking that we have that kind of a tribunal. We do not desire to go into a court which we might feel would be unfriendly to us, and we do not desire to go into a court where the finding of that court in our favor would deprive it of its own jurisdiction and would lessen the revenues of the State which gave that court its being.

It was said in the course of argument that the claims of the State of Iowa asserted in this bill might be tendered to the courts of Minnesota, and that if tendered there they would be fairly considered and granted if well taken, and that there might be a review of their decision had in the Federal Supreme Court upon writ of error. There are two answers to this suggestion. One reason why the State of Iowa desires to have the question determined as to the residence of Abraham Slimmer, Sr., is that it may levy taxes during the course of the administration of his estate in the State of Iowa, and that it may have a person within its jurisdiction upon whom service of process may be made for the levy of other taxes referred to in the bill. Nothing that the State of Minnesota can do through its courts can make this possible. Again, unless it be a pure question of want of jurisdiction, no review of the decision of the Minnesota courts in this connection can ever be had in the Federal court. It is doubtful, even, if the assertion of want of jurisdiction is sufficient upon which to predicate federal review. The truth is that the General Law requires this administration to be had in Iowa because the decedent's domicile was there and probably that the courts of Minnesota have jurisdiction, in the broad sense, to entertain the question of fact as to where the domicile was. If they do have such jurisdiction, do entertain it and do decide against what the plaintiff here insists is the law and the fact, that decision is a mere error, a review of which could never be had in the federal court.

TO COMPEL THIS PLAINTIFF TO SUBMIT THE DETERMINATION OF THE QUESTION TENDERED HERE TO THE DETERMINATION OF THE MINNESOTA TRIBUNALS IS TO SENTENCE THEM IN ADVANCE TO A SUBMISSION TO WHATEVER THOSE TRIBUNALS SHOULD DECIDE AND TO LEAVE THIS SOVEREIGN STATE WITH NO RECOURSE FOR ADJUDICATION OF ITS CONTROVERSY EXCEPT IN THE TRIBUNALS OF ITS ADVERSARY.

IV.

As the record now stands there is no finding in the courts of Minnesota which is of force or effect that Abraham Slimmer, Sr., deceased, was a resident of the State of Minnesota when he died. We call the Court's attention to this matter because of the argument which is made by counsel for the objectors, Bechhoefer and Slimmer, under Division three (3) of their argument. All of that argument falls to the ground upon an examination of the statutes of the State of Minnesota. The allegations of the bill presented for filing state in paragraph 15 that on the sixth day of November the defendant, Lipman, appealed to the District Court of the State of Minnesota from the orders of the Probate Court of Ramsay County admitting said will to probate, and that in connection with the said appeal the orders appealed from admitting the will to probate, and their effect, have been suspended, and there is no finding at the present time that Abraham Slimmer, Sr., died a resident of the State of Minnesota. In this connection we call this court's attention to section 7494 of the General Statutes of Minnesota, 1913. This section has reference to the effect of just such a case as is referred to in plaintiff's bill, and is as follows:

"Such appeal shall suspend the operation of the judgment, order or decree appealed from until the appeal is determined or the District Court shall otherwise order." * * * We are here in this Court asking this Court to now determine in an original proceeding that Abraham Slimmer, Sr.,

died a resident of Iowa, and if this question is determined then it is determinative of the whole issue and the original administration will be granted in the State of Iowa under the laws both of Iowa and Minnesota. We, therefore, say that all of the arguments submitted on behalf of Abraham Slimmer, Jr., and Charles Bechhoefer, from pages eight to twenty-eight, inclusive, have no force or effect because, by reason of the appeal of the defendant, Lipman, the finding of the Probate Court of the State of Minnesota has been set aside and suspended.

V.

Under the laws of the State of Minnesota the administration which can be granted in that State, if the decedent was a resident of the State of Iowa at the time of his decease, is ancillary administration. In this connection we call the court's attention to sections 7274 to 7278, inclusive, of the General Statutes of Minnesota, for 1913.

As alleged in plaintiff's bill, the property now being held is held by the defendant, Bechhoefer, as special administrator under section 7293 of the General Statutes of the State of Minnesota, for 1913, which is as follows:

> "Whenever the appointment of an executor or administrator is necessarily delayed, or for any reason the Probate Judge determines that it is necessary or expedient, he may, with or without notice, appoint a special administrator, to take charge of the estate so long as such judge deems it necessary, and no appeal shall be allowed from the appointment of such administrator."

We are, therefore, freed entirely from the conflict of jurisdiction as suggested by counsel for the objectors, in their arguments, both written and oral.

VI.

As shown upon the face of the bill, all necessary parties have been made parties to the action and it is the claim of the plaintiff that upon the face of the bill all parties who are necessary parties have been made parties to this action.

Counsel for the objectors in Division 1 of their argument and in oral argument stated that the administrator appointed by the Iowa courts under section 1481-*a* 3, supplement to the Code of Iowa, 1913, was a necessary party to this action because the relief which we were asking would put money into his hands. This is not true. Who is the real party in interest in this action? What the State of Iowa is complaining of is the removal of three thousand dollars from her jurisdiction upon which she had a lien for a collateral inheritance tax and against which she had the right to make assessment for ordinary taxes, under the allegations of the bill. Does the administrator in Iowa have any interest in that claim? To ask the question is to answer it. There is no basis for this contention on the part of counsel. Whatever assets come into the hands of the executor or administrator under the laws of the State of Iowa, come burdened with the claim for the collateral inheritance tax, and on the question as to who are necessary parties we call the court's attention to Division 7 of our brief and the cases therein set forth. We think that the cases therein set forth conclusively show that the State of Iowa is the real party in interest; it is her rights that have been invaded and she is the only party who can maintain this suit. It is the contention of the plaintiff that the administrator could not maintain this action with reference to the taxes which are due the State of Iowa.

Counsel for Bechhoefer and Slimmer on page seven of their argument say: "We refrain from discussing the residence of the heirs and beneficiaries under the will, since nothing appears on the face of the proposed bill as to their identity; they are, however, necessary parties, etc."

We think the citation of authorities answers that statement.

Referring again to the case of Peterson *vs.* Iowa, it is said, "The duty to pay on such property (referring to personal property) which precedes and accompanies the right of such foreign legatee was not a burden upon their rights to remove their property as such right of property on their part was dependent upon the payment and DID NOT ARISE UNTIL THE PAYMENT WAS MADE; in other words, all of this personal property on which it was necessary to pay tax, belonged to the State of Iowa or was held for them, and what was left went to the heirs.

The defendants, Slimmer and Bechhoefer, seek to profit by their own wrongdoing.

VII.

We have this very strange situation with reference, at least, to the three thousand dollars:

Two men, residents of another State, came into the State of Iowa and wrongfully took from the State of Iowa and the jurisdiction of her courts, three thousand dollars upon which, by the laws of the State of Iowa, she had a lien, and carried this money into the foreign State of Minnesota. One of these wrongdoers secured from the courts of the sovereign State of Minnesota his appointment as special administrator and is holding admittedly in his possession these three thousand dollars in kind, and is appearing in this court, and, in effect, admitting that he is guilty of the wrong complained of but says, "We admit we did the wrong, but if you want to get your money come and sue us in the courts of the sovereign State of Minnesota." We do not believe that the sovereign State of Iowa can be compelled to resort to the courts of the State of Minnesota for this redress under the Constitution and the laws of the United States.

VIII.

There is no judgment or finding which is being collaterally attacked of the courts of Minnesota in this proceeding. We call this court's attention to this ground because of extended argument of counsel on the other side in oral argument and in their printed brief, and because of some observations made by members of the court in connection with the oral argument, and we claim that the State of Minnesota is a proper party to this action because she has received into the custody of her officers, through her courts, the three thousand dollars in question, and is assuming to proceed to hold this money which was wrongfully taken from the State of Iowa through these defendants, but if this court should find, as we have asked them to determine, that the domicile of Abraham Slimmer, Sr., was in the City of Dubuque, in the county of Dubuque, Iowa, at the time of his death, this money is now in such position that this court may well order its return in kind to the State of Iowa, from whence it was taken by the defendants, Bechhoefer and Slimmer, and the State of Minnesota would be bound by that judgment, and any right claimed in connection with the three thousand dollars would be adjudged and determined in this action, and the adjudication with reference to the domicile of Abraham Slimmer, Sr. would be binding upon the State of Minnesota, and she could not urge in her courts or in any other courts that he was a resident of any other place than that which was found and determined by this court.

IX.

It is not claimed that the rights of Iowa have not been invaded. No person during the course of either the oral or printed argument has suggested that the situation described in the bill tendered is not a wrong upon the rights of the State of Iowa.

It was suggested by the court that the relief prayed for was extreme and unwarranted by the law. In answer to that it may be said there is no penalty in asking for more than you are entitled to except being limited to that which is warranted. The State of Iowa is willing that the State of Minnesota shall exercise an ancillary jurisdiction here and they may do anything with the property which is lawfully within their jurisdiction before returning it to the State of Iowa, that is necessary for the protection of any citizen of the State of Minnesota, or the State of Minnesota herself, but the State of Iowa is entitled to have determined the question of the decedent's domicile at the time of his death, and with this question determined there can be no dispute between the State of Iowa and the State of Minnesota, nor between the other defendants, as to the rights of this plaintiff nor as to what should be done with the property at the end of the ancillary administration in Minnesota, nor as to what should be done with the three thousand dollars wrongfully taken from the State of Iowa. All that we ask is a careful, earnest consideration of the rights of the plaintiff in this matter and that this plaintiff shall have a forum to pass upon her rights that will be free and untrammeled by any prejudice in connection with the same.

Respectfully submitted.

H. M. HAVNER,
Attorney General.
BURTON E. SWEET,
Solicitor for the State of Iowa.

ADDENDA.

Constitution of the United States, Article 3, Section 2, Subdivision 2:

> "In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all other cases, before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

United States Compiled Statutes for 1916, *Section* 1210:

> "The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive, jurisdiction. And it shall have exclusively all such jurisdiction of suits or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction, of all suits brought by ambassadors, or other public ministers, or in which a consul or vice consul is a party."

Code of Iowa, 1897.

Section 1313:

> "Moneys and credits, notes, bills, bonds, and corporate shares or stocks not otherwise assessed, shall

be listed and assessed where the owner lives, except as otherwise provided, and except that, if personal property not consisting of moneys, credits, corporation or other shares of stock, or bonds, has been kept in another assessment district during the greater part of the year preceding the first of January, or of the portion of that period during which it is owned by the person subject to taxation therefor, it shall be taxed where it has been so kept."

Section 1316:

"Any person required to list property belonging to another shall list it in the same county in which he would be required to list it if it were his own, except as herein otherwise directed; but he shall list it separately from his own, giving the assessor the name of the person or estate to which it belongs."

Section 1320:

"Any person acting as the agent of another, and having in his possession or under his control or management any money, notes, credits, or personal property belonging to such other person, with a view to investing or loaning or in any other manner using or holding the same for pecuniary profit, for himself or the owner, shall be required to list the same at the real value, and such agent shall be personally liable for the tax on the same; and if he refuses to render the list or to swear to the same, the amount of such money, property, notes or credits may be listed and valued according to the best knowledge and judgment of the assessor."

Section 3308:

"A copy of the record of the appointment and qualification of any administrator, executor or guar-

dian, in any other State or country, together with the certificate of the custodian thereof that such appointment is then in force, duly attested and authenticated in the manner provided by law in case of judicial records, may be recorded in the proper probate record in any county in this State, and shall be presumptive evidence of such appointment and qualification. Any such administrator, executor or guardian is authorized to release and discharge of record in any manner, and by any instrument authorized by law, to the same extent as any such officer appointed under the laws of this State could do, any judgment rendered by the Supreme Court or by any court of any county where such copy of the record is recorded, or any mortgage or deed of trust given as a mortgage on property within such county belonging to the estate, or to the minor or other person represented by him, and may also release and discharge any property in this State from the lien of such judgment, mortgage or deed of trust; but appended to and as a part of such release shall be the certificate of the judge or clerk of the proper court, duly attested, that said executor, administrator or guardian is, at the date of such release or instrument, still acting as such officer under the authority of said court, and is authorized to execute the same. Nothing herein contained shall authorize any administrator, executor or guardian of another State or country to release or discharge any judgment, mortgage or deed of trust in this State while any administrator, executor or guardian of the estate to which such judgment, mortgage or deed of trust belongs, is authorized to act by virtue of appointment and qualifications under the laws thereof."

Section 3358:

"If the testator has not prescribed the order in which legacies are to be paid, and if no security is

given as above provided, in order to expedite their time of payment, they may be paid in the order in which they are given in the will, where the estate is sufficient to pay all."

Supplement to the Code of Iowa, 1913.

Section 1385-*b*:

"The auditor may correct any error in the assessment or tax list, and may assess and list for taxation any omitted property; but before assessing and listing for taxation any omitted property he shall notify by registered letter the person, firm, corporation, or administrator, or other person in whose name the property is taxed, to appear before him in his office within ten days from the time of said notice and show cause, if any there be, why such correction or assessment should not be made, and should such party feel aggrieved at the action of said auditor he shall have the right of appeal therefrom to the district court. And if such correction or assessment is made after the books have passed into the hands of the treasurer he shall be charged or credited therefor as the case may be. All expense incurred in the making of said correction or assessment shall be borne pro rata by the funds which are affected by said correction and the proceedings to be reported to the board of supervisors."

Section 1452-*a*:

"In addition to all other remedies and proceedings now provided by law for the collection of taxes on personal property, the county treasurer is hereby authorized to bring or cause an ordinary suit at law to be commenced and prosecuted in his name for the use and benefit of the county for the collection

of taxes from any person, persons, firm or corporation as shown by the tax list in his office, and the same shall be in all respects commenced, tried and prosecuted to final judgment the same as provided by the code for ordinary actions."

Section 1481-*a*:

"The estates of all deceased persons, whether they be inhabitants of this State or not, and whether such estate consists of real, personal or mixed property, tangible or intangible, and any interest in, or income from any such estate or property, which property is, at the death of the decedent owner, within this State or subject to, or thereafter, for the purpose of distribution, is brought within this State and becomes subject to the jurisdiction of the courts of this State, or the property of any decedent, domiciled within this State at the time of the death of such decedent, even though the property of such decedent so domiciled was situated outside of the State, except real estate located outside of the State passing in fee from the decedent owner, which shall pass by will or by statutes of inheritance of this or any other State or country, or by deed, grant, sale, gift, or transfer made in contemplation of the death of the donor, or made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person, or for any use in trust or otherwise, other than to or for the use of persons, or uses exempt by this act shall be subject to a tax of five per centum; provided, however, that when such property or any interest therein shall pass to heirs, devisees, or other beneficiaries subject to the tax imposed by this tax who are aliens, non-residents of the United States, the same shall be subject to a tax of twenty per centum of its true value except when such foreign beneficia-

ries are brothers or sisters of the decedent owner, when the rate of tax to be assessed and collected therefrom shall be ten per centum of the value of the property or interest so passing. Any person beneficially entitled to any property or interest therein because of any such gift, legacy, devise, annuity, transfer or inheritance, and all administrators, executors, referees and trustees, and any such grantee under a conveyance, and any such donee under a gift, and any such legatee, annuitant, devisee, heir or beneficiary, shall be respectively liable for all such taxes to be paid by them respectively. The tax aforesaid shall be for the use of the State, shall accrue at the death of the decedent owner, and shall be paid by the treasurer of the State within eight months thereafter, except when otherwise provided in this act, and shall be and remain a legal charge and a lien upon such estate, and any and all of the property thereof from the death of the decedent owner until paid. Real estate sold under order of court shall be released from the lien imposed by this act and the lien shall attach to the proceeds of such sale, provided that prior to the approval of such sale there shall have been given by the person making such sale a good and sufficient bond conditioned to secure the payment of all tax secured by the lien so released. This provision shall not be construed to relieve from personal liability any person owing such tax or whose duty it is to collect and pay such tax to the treasurer of the State."

General Statutes of Minnesota, 1913.

Section 7274:

"Every will duly proved and allowed outside of this State, in accordance with the laws in force in the place where proved, may be allowed, filed, and

recorded in any county in which the testator left property upon which such will may operate."

Section 7278:

"In all cases of administration in this State of the estates of decedents who were non-residents, upon payment of the expenses of administration and the debts here proved, the residue of the personalty shall be distributed according to the terms of the will applicable thereto, if there be a will, or according to the law of the decedent's domicile. Or the court, in its discretion, may direct that it be transmitted to the personal representative of the decedent at the place of such domicile, to be disposed of by him. And the real estate not sold in the courts of administration shall be assigned according to the will, if there be one; otherwise, according to the laws of this State."

Section 7293:

"Whenever the appointment of an executor or administrator is necessarily delayed, or for any reason the probate judge determined that it is necessary or expedient, he may, with or without notice, appoint a special administrator, to take charge of the estate so long as such judge deems it necessary, and no appeal shall be allowed from the appointment of such administrator."

Section 7494:

"Such appeal shall suspend the operation of the order, judgment, or decree appealed from until the appeal is determined or the district court shall otherwise order. The court shall have discretionary power, for cause shown, to require the appellant to give

further security for the payment of damages which may be awarded against him in consequence of such suspension, in case he fails to obtain a reversal of the order, judgment, or decree so appealed from. But nothing herein contained shall prevent the probate court from appointing special administrators or special guardians, or to prevent special administrators or guardians appointed prior to such appeal from acting as such."

Supreme Court of the United States.

No. ..... Original, October Term, 1917.

STATE OF IOWA,

Complainant,

vs.

ABRAHAM SLIMMER, JR., CHARLES BECHHOEFER, ADOLPH LIPMAN, and THE STATE OF MINNESOTA,

Defendants.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

BRIEF OF STATE OF MINNESOTA.

CLIFFORD L. HILTON,
Attorney General,
EGBERT S. OAKLEY,
Assistant Attorney General,
Attorneys for the State of Minnesota.

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ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

BRIEF OF STATE OF MINNESOTA.

STATEMENT.

From the proposed Bill of Complaint it appears:

That one Abraham Slimmer died on August 15, 1917. That at the time of his death and for many years prior he was and had been a resident of the State of Iowa and had been and was possessed of personal property consisting of promissory notes of the value of about $550,000.00, which personal property, except a $3,000.00 note, wearing apparel and personal effects, were at the time of his death

and prior thereto situate in the State of Minnesota,—the $3,000.00 note and personal effects being in Iowa.

That said Abraham Slimmr failed and refused to return for the purpose of taxation in Iowa the personal property owned by him, and that the State of Iowa under its laws is now entitled to have levied and collected on account of the ownership of such property taxes which should have been levied within five (5) years from the date of such omission.

That on or about August 21, 1917, the purported will of Abraham Slimmer was filed in the Probate Court of Ramsey county, Minnesota, and thereafter the will was admitted to probate in said court, and defendants, Slimmer and Bechhoefer, were appointed and commissioned as executors of said last will.

That on the 7th day of January, 1918, in a proceeding had in the District Court of Iowa, it was adjudged that Abraham Slimmer, deceased, was domiciled at the time of his death in the City of Dubuque, Iowa; and on January 7, 1918, letters of administration under the decedent's estate were granted to D. E. Mullany, who is now duly acting and qualified as such.

That the plaintiff is entitled to have original probate of the last will of Abraham Slimmer, deceased, in its tribunal in order that it may levy and collect during administration and for five (5) years preceding decedent's death general taxes and fees which may be and should have been levied.

That the property of said Abraham Slimmer, deceased, will be distributed by the Courts of the State of Minnesota with disregard of the rights and claims of the State of Iowa, and that this plaintiff does not desire to submit its claims to the tribunals of the State of Minnesota.

ARGUMENT.

The State of Minnesota objects to the granting of permission to file the Bill of Complaint on two grounds, to-wit:

(a). There is no authority for the bringing of such an action as this in Federal Court.

(b). The Probate Court in Minnesota has exclusive jurisdiction to control and administer the personal assets within its borders of a resident or non-resident decedent.

These objections will be taken up in their order.

A.

IT IS FOR THE STATE LEGISLATURES TO PRESCRIBE HOW PROPERTY IS TO BE ASSESSED AND TO PROVIDE THE REMEDIES BY MEANS OF WHICH THE PAYMENT OF THE TAXES LEVIED SHALL BE ACCOMPLISHED. THE LEGISLATIVE REMEDIES WHEN PRESCRIBED ARE EXCLUSIVE, AND IF SUCH REMEDIES FAIL, THEN THE COLLECTION OF THE TAX MUST ALSO FAIL.

From an examination of the Bill of Complaint, it appears beyond doubt that the only real interest which the State of Iowa has in this controversy arises by virtue of the revenue laws of that state.

The Iowa Legislature has provided for the assessment of personal property by statutory provisions which are certain. (Sections 1309, 1310, and 1313 in Appendix.) It has provided numerous and drastic remedies by means of which the payment of taxes may be enforced. (Sec-

tions 1374, 1389, C. 1400, 1404, 1406, 1407, 1409, 1410, and 1452 A in Appendix.)

The Supreme Court of Iowa in Plymouth County v. Moore, 114 Iowa 700, has held that the legislative prescribed remedies are exclusive; and that by adopting the same "the Legislature must be held to have intended to exclude any other procedure."

In Preston v. Sturgis Milling Company, C. C. A. Sixth Circuit, 183 Fed. 1, 3, Judge Cochran for the Court said:

> "That principle is that the power of taxation is legislative and cannot be exercised other than under legislative authority. * * * The scope of the principle is that each step in the process of taxation from beginning to end can be taken only as the Legislature may prescribe. * * * That power (of taxation) is exercised only in the taking of any of the steps in the process of raising and disbursing taxes. It is not, however, within the scope of this principle that the judiciary shall in no event exercise this power of taxation. Its scope is that it shall not exercise it unless the Legislature shall so provide. If the Legislature does so provide, it may exercise it to the extent provided."

He, at page 8, quoted these words from an opinion by Mr. Justice Bradley:

> "No federal court, either on its law or equity side, has any inherent jurisdiction to lay a tax for any purpose, or to enforce a tax already levied, except through the agencies provided by law. However urgent the appeal of creditors and the apparent hopelessness of their position without the aid of the federal court, it cannot seize the power which belongs to the legislative department of the state and wield it in their behalf."

In Preston v. Chicago, St. L. & N. O. R. Co., 183 Fed. 20, C. C. A. Sixth Circuit, the court held that the remedy

providing for the collection of taxes due from a railroad company to a county or other taxing district by an action in the name of the commonwealth to be brought by an officer authorized to receive such taxes was exclusive and that a suit in equity would not lie. At Page 22, the Court said:

> "Appellant's counsel would apply here equitable principles which have been applied in suits against private corporations by its creditors to reach its assets. But such principles can have no application here because what is sought is that the court exercise the power of taxation which it cannot do otherwise than under legisaltive authority, and there is no legislation authorizing the bringing of such a suit as is brought here. It helps him not that there is no officer to bring the suit authorized by said section 4104. His appeal should be to the Legislature for relief and not to the courts."

Postal Telegraph Cable Company v. Alabama, 155 U. S. 482, 487, was a case involving the right of removal to Federal Court. Nevertheless in this case we find the following pertinent paragraph written by Mr. Justice Gray:

> "But the suit was one brought by the State to recover taxes and penalties imposed by its own revenue laws, the jurisdiction over which belongs to its own tribunals, except so far as Congress, in order to secure the supremacy of the National Constitution and laws, has provided for a removal into the courts of the United States. Wisconsin v. Pelican Ins. Co., 127 U. S. 265, 290; Huntington v. Attrill, 146 U. S. 657, 672. And the complaint by which the suit was begun did not mention the Constitution or any law of the United States, or claim any right under either."

Since the decision rendered by the Supreme Court of Iowa in the case of Plymouth County v. Moore, supra, another remedy has been added to those which theretofore existed.

By Section 1452-A, set forth in full in Appendix, the county treasurer is authorized to bring or cause an ordinary suit at law to be commenced and prosecuted in his name for the use and benefit of the county for the collection of personal property taxes.

By reference to the Code and Supplement, we find that in Iowa the Legislature has now prescribed the following remedies whereby the payment of personal property taxes may be enforced:

Section 1389-C makes the same a lien on real estate in certain cases.

By Section 1400 taxes upon stocks of goods or merchandise are made a lien thereon, which lien continues when sold in bulk.

Section 1404 gives a lien on personal property of nonresidents and authorizes the county treasurer to proceed by distress to restrain removal in order to secure lien of taxes due or to become due.

Section 1406 authorizes the distress and sale of personal property, and says that the tax list alone shall be sufficient warrant therefor.

Section 1407 authorizes the appointment of collectors to assist the county treasurer.

Section 1409 provides for the certification of an abstract of the delinquent taxes to any other county where the delinquent may reside or have property.

Section 1410 gives such abstract when filed the effect of a levy of taxes in that county.

Section 1452-A expressly authorizes an ordinary action at law for the collection of personal property taxes.

Sections 1309, 1310, and 1313 all pertain to the assessment of personal property.

Section 1374 provides for the assessment of withheld or overlooked property and authorizes the county treasurer to cause an action to be brought in the name of the treasurer for the use of the proper county. This section further requires that when such property has been fraudulently withheld from assessment, there be added to the sum found to be due 50% upon the amount.

Clearly under the doctrine of Wisconsin v. Pelican Insurance Company, 127 U. S. 265, this court has not original jurisdiction of an action brought under said Section 1374, or under a judgment secured thereunder.

The statutory provision for the assessment of property and the collection of taxes levied on account of the ownership of the same by the statutes of Iowa are drastic, specific and certain. The remedies provided for are generally adequate to meet all conditions. In any event, the remedies are exclusive and this court cannot in equity authorize the bringing of such a suit as this without statutory authority.

B.

THE PROBATE COURTS IN MINNESOTA HAVE EXCLUSIVE JURISDICTION TO CONTROL AND ADMINISTER THE PERSONAL ASSETS WITHIN ITS BORDERS OF A RESIDENT OR NON-RESIDENT DECEDENT.

Section 7 of Article VI of the Minnesota Constitution in part reads as follows:

> "• • • A probate court shall have jurisdiction over the estates of deceased persons and persons under guardianship, but no other jurisdiction except as is prescribed by this Constitution."

Section 7205, Minnesota G. S. 1913, contains the following language:

> "Wills shall be proved and administration upon the estates of decedents shall be granted:
>
> 1. If the decedent, at the time of his death, was a resident of this state, in the county of such residence.
>
> 2. If a non-resident, dying within or without this state, in any county, wherein he left property, or into which any property belonging to his estate shall come; and such administration first legally granted shall extend to all the assets of the decedent in this state."

The provisions of the last quoted section are in accord with the general rule in the states to the effect that the existence of local assets confers jurisdiction regardless of domicile. Schouler on Wills, Fifth Edition, Section 1091; Wilkins v. Ellett, 108 U. S. 256, 258.

In Baker v. Baker, Eccles & Company, 242 U. S. 394, 401, Mr. Justice Pitney, speaking for the court said:

> "The rule generally adopted throughout the states is that an administrator appointed in one state has no power *virtute officii* over property in another. No state need allow property of a decedent to be taken without its borders until debts due to its own citizens have been satisfied; and there is nothing in the Constitution of the United States aside from the full faith and credit clause to prevent a state from giving a like protection to its own citizens or residents who are interested in the surplus after payment of debts."

The jurisdiction of the Probate Court over an estate attaches when its general jurisdiction is invoked by the presentation of a proper petition by some person entitled to take such action. Hanson v. Nygaard, 105 Minn. 30.

In all cases of conflict between jurisdictions of independent and concurrent authority that which acquires possession of the res which is the subject of the litigation

is entitled to administer it, and the possession of said court cannot be disturbed by process issued out of another court, State or Federal. Beyers v. McAuley, 149 U. S. 608; Borer v. Chapman, 119 U. S. 587, 600; Moran v. Sturges, 154 U. S. 256, 274.

Section 720, U. S. Revised Statutes, now Section 265 of the Judicial Code, reads as follows:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except, in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

In Whitney v. Wilder, 54 Fed. 554, the Circuit Court of Appeals, for the Fifth Circuit, said:

> "This prohibition of the statute extends to all cases over which the state court first obtains jurisdiction, and applies not only to injunctions aimed at the state court itself, but also to injunctions issued to parties before the court, its officers or litigants therein. Diggs v. Wolcott, 4 Cranch, 179; Peck v. Jenness, 7 How. 625; Dial v. Reynolds, 96 U. S. 340."

Section 7278, Minnesota G. S. 1913, reads as follows:

> "In all cases of administration in this state of the estates of decedents who were non-residents, upon payment of the expenses of administration and of the debts here proved, the residue of the personalty shall be distributed according to the terms of the will applicable thereto, if there be a will, or according to the law of the decedent's domicil. Or the court, in its discretion, may direct that it be transmitted to the personal representative of the decedent at the place of such domicil, to be disposed of by him. And the real estate not sold in the course of administration shall be assigned according to the will, if there be one; otherwise, according to the laws of this state."

If Minnesota is not the domicile of a decedent, it is the duty of its courts, upon completion of probate proceedings, either to distribute the residue of the estate in accordance with the laws of the estate of domicile or to cause such residue to be transmitted to the representatives of the estate at the place of domicile. Gregory v. Lansing, 115 Minn. 73; Putnam v. Pittman, 45 Minn. 242.

Under the rule laid down in New Orleans v. Stempel, 175 U. S. 309, and Wheeler v. New York, 233 U. S. 434, the personal property of the decedent in Minnesota at the time of his death for inheritance tax purposes had a taxable situs here.

Section 2271, Minnesota G. S. 1913, in part reads as follows:

> "A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporation within the state, for strictly county, town or municipal purposes, in the following cases:
>
> (1) When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.
>
> (2) When a transfer is by will or intestate law, of property within the state, or within its jurisdiction, and the decedent was a non-resident of the state at the time of his death. * * *"

In Section 2276, Minnesota G. S., 1913, the following language is found:

> "Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property is transferred, and the adminis-

trators, executors and trustees of every estate embracing such property shall be personally liable for such tax, until its payment, to the extent of the value of such property."

In Section 2281, Minnesota G. S. 1913, it is provided:

"If any non-resident of this state dies owning personal property in this state, such property may be transferred or assigned by the personal representative of, or trustee for the decedent, only after such representative or trustee shall have procured a certificate from the attorney general consenting to the transfer of such property. Such consent shall be issued by the attorney general only in case there is no tax due hereunder; or in case there is a tax, when the same shall have been paid."

In the present case Minnesota without doubt is entitled to inheritance taxes. The decedent's estate at and prior to the date of death, according to the bill sought to be filed, consisted almost entirely of property which had a taxable situs in Minnesota, which State had and has under universally accepted doctrine the absolute right to administer the property within its jurisdiction. Minnesota has the right to collect its inheritance taxes, on account of the transfer of the decedent's property, through its Probate Court. Such right is found in Section 2287, Minnesota G. S. 1913, which reads as follows:

"The report of the appraisers shall be filed with the probate court, and from such report and other proof relating to any such estate before the probate court the court shall forthwith, as of course, determine the true and full value of all such estate and the amount of tax to which the same are liable; or the probate court may so determine the full and true value of all such estates and the amount of tax to which the same are liable without appointing appraisers."

But the important point is that Abraham Slimmer's last Will and Testament has been proved, allowed and admitted to probate in Ramsey County, Minnesota, where practically all of decedent's estate is and for years has been located. The probate of such will in Minnesota as to the property therein is a proceeding in rem. The decree of the Ramsey county, Minnesota, Probate Court admitting such Will to probate is final and conclusive except on appeal to a higher court. The decree is under the Constitutional provision entitled to full faith and credit in so far as the property in Minnesota is concerned. Wharton on Conflict of Laws, Volume II, Third Edition, Section 1390; Newcomb v. Newcomb, 108 Ky. 582.

Leave to file Bill of Complaint should be denied.

Respectfully submitted,

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APPENDIX.

The following sections are taken from the 1897 Code of Iowa and from the 1913 & 1915 Supplement thereto:

Sec. 1309. *Credits defined.* The term credit, as used in this chapter, includes every claim or demand due or to become due for money, labor or other valuable thing, every annuity or sum of money receivable at stated periods, and all money or property of any kind secured by deed, title bond, mortgage or otherwise; but pensions of the United States or any of them, or salaries, or payments expected for services to be rendered, are not included in the above term.

Sec. 1310. *Money—credits—annuities—bank notes—stock.* Moneys, credits, and corporation shares or stocks, except as otherwise provided, cash, circulating notes of national banking associations, and United States legal tender notes, and other notes, and certificates of the United States payable on demand, and circulating or intended to circulate as currency, notes, including those secured by mortgage, accounts, contracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, securities, debentures, bonds other than those of the United States, annuities, and corporation shares or stocks not otherwise taxed in kind, shall be assessed, and, excepting shares of stock of national, state and savings banks and loan and trust companies, and moneyed capital as hereinafter defined, shall be taxed upon the uniform basis throughout the state of five mills on the dollar of

actual valuation, same to be assessed and collected where the owner resides. The millage tax here provided for shall be in lieu of all other taxes upon moneys and credits and shall be levied by the board of supervisors, placed upon the tax list and collected by the county treasurer, and the amount collected in the various taxing districts of the state shall be divided between the various funds upon the same pro rata basis as other taxes collected in such taxing district are apportioned. All moneyed capital within the meaning of section fifty-two hundred nineteen of the Revised Statutes of the United States shall be listed and assessed against the owner thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, savings, national bank and loan and trust company stock is taxed, and the same taxing district, and at the actual value of the moneyed capital so invested. The person or corporation using moneyed capital in competition with the bank capital shall furnish the assessor upon demand a full and complete itemized sworn statement showing the amount of moneyed capital so used.

Sec. 1313. *Place of listing.* Moneys and credits, notes, bills, bonds, and corporate shares of stocks not otherwise assessed, shall be listed and assessed where the owner lives, except as otherwise provided, and except that, if personal property not consisting of moneys, credits, corporation or other shares of stock, or bonds, has been kept in another assessed district during the greater part of the year preceding the first of January, or of the portion of that period during which it was owned by the person subject to taxation therefor, it shall be taxed where it has been so kept.

Sec. 1374. *Withholding property from assessment—penalty.* When property subject to taxation is withheld, overlooked, or from any other cause is not listed and assessed, the county treasurer, when apprised thereof, at any time within five years from the date at which such assessment should have been made, demand of the person, firm, corporation or other party by whom the same should have been listed, or to whom it should have been assessed, or of the administrator thereof, the amount the property should have been taxed in each year the same was so withheld or overlooked and not listed and assessed, together with six per cent interest thereon from the time the taxes would have become due and payable had such property been listed and assessed, and upon failure to pay such sum within thirty days, with all accrued interest, he shall cause an action to be brought in the name of the treasurer for the use of the proper county, to be prosecuted by the county attorney, or such other person as the board of supervisors may appoint, and when such property has been fraudulently withheld from assessment, there shall be added to the sum found to be due a penalty of fifty per cent upon the amount, which shall be included in the judgment. The amount thus recovered shall be by the treasurer apportioned ratably as the taxes would have been if they had been paid according to law.

Sec. 1389-c. *Lien on real estate.* Personal tax entered on delinquent personal tax list, as provided in Sections 1 and 2 of this act, shall constitute a lien on any real estate owned or acquired by any such delinquent, and so remain until the same has been paid or legally canceled, and taxes not so entered for each year shall cease to be a lien.

Sec. 1400. *Lien of taxes.* Taxes upon real estate shall be a lien thereon against all persons except the state. Taxes due from any person upon personal property shall be a lien upon any and all real estate owned by such person or to which he may acquire title. As against a purchaser, such lien shall attach to real estate on and after the 31st day of December in each year. Taxes upon stocks of goods or merchandise shall be a lien thereon and shall continue a lien thereon when sold in bulk, and may be collected from the owner, purchaser or vendee. In all cases where buildings are assessed as personal property, the taxes shall be and remain a lien on said building from the date of levy until paid.

Sec. 1404. *Lien on personal property of non-residents.* All personal property, the owner of which is a non-resident of the state, and which property is by the owner thereof intended for sale or consumption at a place or shipment to a place other than where said property is located, shall be assessed in the owner's name, if the owner is known, and if the owner is unknown or uncertain, the same shall be assessed to "unknown owner," and shall be by the assessor sufficiently described so that said property may be identified. A lien for the tax upon said property as herein provided shall relate back to and exist from the first day of January of the year for which it was assessed, and if any one seeks to remove the said property from the county before the tax for said year shall be paid, the tax shall immediately become due and collectible. It shall be the duty of the assessor to notify the county auditor if said property is being, or is about to be, removed from the county. In such event, or if the knowl-

edge of the removal of or intent to remove said property shall come to him in any other authentic manner, the said auditor shall certify such fact to the county treasurer with a full description of the property as the same appears on the assessor's books, giving assessment district, where located, and the amount of said assessment, and the county treasurer shall thereupon proceed by distress to restrain removal of said property and secure a lien of the tax due or to become due. If at the time of such distress the levy for the year is unknown, the auditor is authorized to release the lien of such tax upon a good and sufficient bond, with sureties resident of the county, being filed with said auditor, to be by him approved, which bond shall obligate all parties thereto to pay all taxes due on said property when same are payable. Upon the filing and approving of such bond, the auditor shall make a certificate releasing the said personalty from the lien of such tax. The payment of said tax shall be a bar against the collection of taxes for same year on said property in any other county in this state.

Sec. 1406. *Sale of personal property.* If any one neglects to pay his taxes at or before maturity, the treasurer may collect the same by distress and sale of his personal property not exempt from taxation, and the tax list alone shall be sufficient warrant therefor. When the treasurer distrains goods, and the owner refuses to give sufficient bond for the delivery of the same on the day of sale, he may keep them at the expense of the owner and shall give notice of the time and place of their sale within five days after the taking, in the manner constables are required to give notice of the sale of personal property un-

der execution. The time of sale shall not be more than twenty days from the day of taking, but he may adjourn the sale from time to time, not exceeding five days in all, and shall adjourn at least once when there are no bidders and, in case of adjournment, he shall post up a notice thereof at the place of sale, announcing the time at which the adjournment is ordered. Any surplus remaining above the taxes, charges of keeping, and fees for sale, shall be returned to the owner and the treasurer shall, on demand, render an account in writing of the sale and charges.

Sec. 1407. *Collectors—appointment of—compensation —sheriff.* Immediately after the taxes become delinquent, each county treasurer shall proceed to collect the same by distress and sale of the personal property of the delinuqent tax payer, and for this purpose he may appoint one or more collectors to assist him in collecting the same. Each collector appointed shall receive for his services and expenses the sum of five per cent on the amount of all taxes collected and paid over by him, which percentage he shall collect from the delinquent together with the whole amount of delinquent taxes and interest; and pay the same to the treasurer at the end of each month, and in the discharge of his duties as collector, should it become necessary to make the delinquent taxes by distress and sale, or should no collector be appointed, or should the collector fail to institute proceedings to collect delinquent taxes, the treasurer shall place the same in the hands of the sheriff, or a constable, who shall proceed to collect the same, and either shall be entitled to receive the same compensation in addition to the five per

cent, as constables are entitled to receive for the sale of property on execution. And the boards of supervisors may in their discretion authorize the appointment by the treasurer of one or more collectors to assist in the collection of such delinquent property tax as the board may designate, and may pay such collector as full compensation for all services rendered and expenses incurred, a sum not to exceed ten per cent of the amount collected which sum shall in no event be paid or allowed until all such taxes collected shall have been paid over to the county treasurer by such collector.

Sec. 1409. *Taxes certified to another county.* That section fourteen hundred nine of the code he and the same is hereby repealed and the following enacted in lieu thereof:

In all cases of delinquent taxes in any county, where the person upon whose property the same were levied shall have disposed of or rmeoved the said property and the treasurer of the county where the taxes were levied can find no property within said county out of which said taxes can be made, the treasurer of the county where said taxes are delinquent shall make out a certified abstract thereof, and forward the same to the treasurer of said county in which the delinquent resides or has property, when the treasurer transmitting the said abstract has reason to believe that said taxes can be collected thereby.

Sec. 1410. *Collection in such case.* The treasurer forwarding and the one receiving such abstract shall each keep a record thereof, and, upon receipt and filing in the office of the treasurer to whom sent, it shall have the effect of the levy of taxes in that county, and the collection of

the same shall be proceeded with in the same manner as in the collection of other taxes.

Sec. 1452-a. *Actions authorized.* In addition to all other remedies and proceedings now provided by law for the collection of taxes on personal property, the county treasurer is hereby authorized to bring or cause an ordinary suit at law to be commenced and prosecuted in his name for the use and benefit of the county for the collection of taxes from any person, persons, firm or corporation as shown by the tax list in his office, and the same shall be in all respects commenced, tried and prosecuted to final judgment the same as provided by the code for ordinary actions.

14.

Supreme Court of the United States.

OCTOBER TERM, 1917.

STATE OF IOWA,

Plaintiff,

vs.

ABRAMAM SLIMMER, JR., CHARLES BECHHOEFER, ADOLPH LIPMAN and THE STATE OF MINNESOTA,

Defendants.

BRIEF ON BEHALF OF ABRAHAM SLIMMER, JR., AND CHARLES BECHHOEFER, DEFENDANTS, IN OPPOSITION TO APPLICATION FOR LEAVE TO FILE BILL OF COMPLAINT.

THOMAS D. O'BRIEN,
EDWARD T. YOUNG,
ALEXANDER E. HORN,
Solicitors for Abraham Slimmer, Jr.,
and Charles Bechhoefer.

THOMAS D. O'BRIEN,
St. Paul, Minn.,
Counsel.

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Defendants.

BRIEF ON BEHALF OF ABRAHAM SLIMMER, JR., AND CHARLES BECHHOEFER, DEFENDANTS, IN OPPOSITION TO APPLICATION FOR LEAVE TO FILE BILL OF COMPLAINT.

STATEMENT.

It is alleged in the bill of complaint proposed to be filed that Abraham Slimmer died August 15, 1917, a resident of and domiciled in the State of Iowa; that his estate consisted entirely of personal property of the value of about Five Hundred and Fifty Thousand Dollars, all of which, except a note for Three Thousand Dollars, his clothing and personal effects, was in Minnesota at the time of his death; that this note and personal effects were, after his

death, removed by defendants Slimmer and Bechhoefer to Minnesota; that they, on August 21, 1917, filed in the Probate Court of Ramsey County, Minnesota, a paper purporting to be his last will and testament, and "procured" from said Probate Court "an ex parte order and decree" admitting this instrument to probate, and a finding that decedent was a resident of said Ramsey County, and also "procured from the same Court" an order appointing them as Executors; that decedent "pretended" to be a resident of St. Paul, Minnesota, and during his lifetime "concealed" his property from the State of Iowa and "failed and refused to return the same for taxation" and that the State of Iowa is entitled to collect taxes for the five years preceding his death, amounting to Thirteen Thousand Seven Hundred and Fifty Dollars, but that these taxes cannot be collected except in Iowa, and by an assessment and levy against the personal property of the decedent; that the State of Iowa is entitled to have original probate of his will and to administer upon and distribute the estate; that the State of Iowa "has never appeared to any of the proceedings in the State of Minnesota, and hereinbefore described and does not desire to submit its claims to the tribunals of the State of Minnesota"; that on January 7, 1918, letters of administration upon the estate of decedent were granted by the District Court of Iowa to D. E. Mullaney, who claims the right to the possession and control of all the assets of the estate, including the property in Minnesota, and the plaintiff state prays judgment as follows: (1) That decedent was at the time of his death and for five years prior thereto a resident of the State of Iowa; (2) that no part of his estate was at his death in Minnesota; (3) that the State

of Iowa has, and the State of Minnesota has not, jurisdiction to administer upon and distribute the estate; (4) that the proceedings in Minnesota be dismissed and the estate administered upon and distributed in Iowa; and (5) that defendants be restrained from proceeding with the administration or distribution of the estate in Minnesota.

Permission to institute the proposed action should be refused:

I.

Because the object of this action is to transfer to Mullaney, the administrator appointed in Iowa, the custody and possession of the property constituting the estate of Abraham Slimmer, and therefore the State of Iowa is not a proper plaintiff.

II.

Because it appears upon the face of the proposed bill that Mullaney, the administrator, is a necessary party to the proposed action, and, inasmuch as he is a resident of Iowa, this Court has no jurisdiction of the proposed action.

III.

Because the relief demanded could only be granted by violating Section 1, Article IV of the Constitution of the United States.

IV.

Because the proposed bill of complaint does not state any grounds for equitable relief, and it appears upon its face that the complainant has an adequate remedy at law.

ARGUMENT.

I.

THE OBJECT OF THIS ACTION IS TO TRANSFER TO MULLANEY, THE ADMINISTRATOR APPOINTED IN IOWA, THE CUSTODY AND POSSESSION OF THE PROPERTY CONSTITUTING THE ESTATE OF ABRAHAM SLIMMER, AND THEREFORE THE STATE OF IOWA IS NOT A PROPER PLAINTIFF.

It appears from the proposed bill that on January 17th, 1918, and about five months after the death of decedent, one Mullaney, a resident of Iowa, was appointed administrator by the District Court of that State; that he is acting as administrator in Iowa, and, by virtue of an appointment made several months after the appointment of the executors in Minnesota, claims the exclusive right to the possession and control of all the assets of the estate, and that all claims against the estate should be made in, and their validity determined by the District Court of Iowa. See Subdivision XIX.

It is not stated in the proposed bill whether he has refused, or refuses to appear in the Courts of Minnesota, or that the proposed bill is filed at his request, and so far as appears, the State of Iowa is an interloper, and without any interest in the estate, other than the interest which any creditor has.

Such an action must be brought by the real party in interest, which in this case, is Mullaney, the administrator

The title of an estate is vested during administration in the administrator and the duty devolves on him of re

ducing to his possession all the personal property belonging to the estate wherever situated.

In Carroll v. United States, 13 Wall. 151, held:

> "The instant of decedent's death, the interest in all chattels vested in the Executor or administrator, as the case may be, whether he has reduced them into his actual possession, or not, and however widely dispersed, or remotely situated, they are regarded in law as assets in his hands."

This rule was also stated in Putnam v. Pitney, 45 Minn. 242, where it was said:

> "It would seem to logically follow from this proposition, that the executor or administrator of the domicile of the deceased, is invested with title to all his personal property for the purpose of collecting the effects of the estate, paying debts and making distribution of the residue, according to the law of the place, or the directions of the will as the case may be."

II.

WHERE A DEFECT OF PARTIES APPEARS ON THE FACE OF THE BILL, AND IT FURTHER APPEARS THAT WHEN ALL THE NECESSARY PARTIES ARE BROUGHT IN, THE COURT WILL BE WITHOUT JURISDICTION, THE COURT WILL REFUSE TO ENTERTAIN THE BILL.

It appears on the face of the proposed bill that Mullaney, the administrator, is a necessary party to the proposed action, and inasmuch as he is a resident of Iowa, this Court has no jurisdiction of the proposed action.

In any aspect of this case, Mullaney, the administrator, is a necessary party, and if adding him as a party would leave this Court without jurisdiction, the formality of permitting an amendment will not be allowed.

In State of Minnesota v. Northern Securities Company, 184 U. S. 197, an application was made in the Supreme Court of the United States, by the State of Minnesota, as complainant, to file its bill against the Northern Securities Company, a corporation, of New Jersey, and it appeared from the bill that a large portion of the capital stock of the Great Northern Railway Company, a Minnesota corporation, was owned by the Northern Securities Company. The application to file the proposed bill was denied on the ground that the minority stockholders of the Great Northern Railway Company had a right, through that company, to be represented in the controversy, and for that reason it was an indispensable party.

Mr. Justice Shiras, speaking for the Court, said:

> "The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, are to be made parties to it, so that there may be a complete decree which shall bind them all. By this means the Court is enabled to make a complete decree between the parties to prevent future litigation, by taking away the necessity of multiplicity of suits, and to make it perfectly certain that no injustice is done either to the parties before it, or to others who are interested in the subject-matter, by a decree that might otherwise be granted upon a partial view only of the real merits" * * * "When it appears to a Court of equity that a case otherwise presenting grounds for its action, cannot be dealt with because of the absence of essential parties, it is usual for the Court, while sustaining the objection, to grant leave to the complainant to amend by bringing in such parties, but when it likewise appears that necessary and indispensable parties are beyond the reach of the jurisdiction of the Court, or that, when made parties, the jurisdiction of the Court will thereby be defeated, for the Court to grant leave to amend would be useless."

To the same effect see State of California v. Southern Pacific Co., 157 U. S. 229.

We refrain from discussing the residence of the heirs and beneficiaries under the will, since nothing appears on the face of the proposed bill as to their identity. They are, however, necessary parties, and a statement from counsel for plaintiff as to their residence might tend to conserve the time of this Court.

All persons whose rights may be injuriously affected by a decree are necessary parties.

Carreau v. O'Callihan, 125 Fed. 657.

In Rogers v. Penobscot Mining Co., 154 Fed. 606, held that

> "an indispensable party is one who has such an interest in the subject matter of the controversy that a final decree between the parties before the Court cannot be made without injuriously affecting his interest, or leaving the controversy in such a situation that its final determination may be inconsistent with equity and good conscience."

In State of California v. Southern Pacific Ry., 157 U. S. 229, held

> "A Court cannot adjudicate directly upon a party's right, without the party being actually or constructively before the Court."

The rule is stated in 23 Cyc. 1035:

> "A bill in equity for relief against judgments should join as defendants all persons really and beneficially interested in the judgments, or whose rights are liable to be affected by the judgments."

III.

THE RELIEF DEMANDED COULD ONLY BE GRANTED BY VIOLATING SECTION I, ARTICLE IV, OF THE CONSTITUTION OF THE UNITED STATES.

The order or decree of the Probate Court admitting this will to probate and appointing the Executors was conclusive and binding upon all persons interested in the estate, and the Courts of the United States are without jurisdiction to set it aside.

The Probate Courts of Minnesota, by the constitution of that state, have exclusive jurisdiction over the estates of deceased persons. See Section 7, Article VI, G. S. 1913. APPLEBY v WATKINS, 95 Minn., 455.

This jurisdiction extends to the estates of:

(1) Persons residing in Minnesota.

(2) Non-residents, whether dying within or without the state, leaving property in the state. Section 7205, G. S. 1913.

The estate of a non-resident is, after payment of expenses of administration and debts, distributed according to the terms of the will, if there be a will, or according to the law of the decedent's domicile, or the Court in its discretion may direct that it be transmitted to the personal representatives of the decedent at the place of such domicile. Section 7278, G. S. 1913.

Proceedings in the Probate Courts of Minnesota are in the nature of proceedings *in rem* and as to property within the jurisdiction of the court, conclusive.

Ample provision is made by the laws of Minnesota for hearing, contest and review.

Notice of hearing on an application to probate a will must be given by publication for three weeks, and such other notice as the Court may direct. Sections 7227, 7229, 7268, G. S. 1913.

The will may be contested in the Probate Court by filing objections. Section 7270, G. S. 1913.

An appeal may be taken to the District Court from the order admitting or refusing to admit the will, or appointing or refusing to appoint the Executors, by "any party agreed." Section 7490, G. S. 1913.

This appeal may be taken within six months from the entry of the order, unless notice is given, and if notice is given, within thirty days after such notice. Section 7492, G. S. 1913.

An appeal from the decision or judgment of the District Court may be taken to the Supreme Court of the State. Section 7993, G. S. 1913.

The Probate Court had jurisdiction to prove the will, even if decedent was not as claimed in the proposed bill, domiciled in or a resident of Minnesota.

His entire estate, which consisted of personal property, and of the value of about Five Hundred and Fifty Thousand ($550,000.00) Dollars, was in Minnesota at the time of his death, except about Three Thousand Dollars. This of itself gave the Probate Court jurisdiction to prove the will and administer upon and dispose of the Minnesota estate as provided by Section 7278 above cited; that is, jurisdiction to the extent of the payment of expenses of administration, and the debts in Minnesota, and to direct

the Executors, after this was done, to transmit the residue of the estate to the personal representatives at the place of domicile, if it appeared that decedent's domicile was outside the state.

The Supreme Court of Minnesota in Putnam v. Pitney, 45 Minn. 242, in construing this section of the statutes, held:

> "that the state, where personal property is situated has the right to assert its jurisdiction over it by ancilliary administration, wherever necessary to protect its own citizens who are creditors of the estate, in which case, however, after satisfying their demands, it would turn over the surplus to the Probate Court of the domicile for the final settlement of the estate."

and also

> "a foreign will if executed according to the laws of this state may be probated here and letters of administration with the will annexed issued, although the decedent left only personal property in this state."

The finding that the decedent was a resident of Ramsey County, however, gave the Probate Court full and complete jurisdiction and control of the Minnesota property, for all purposes, including final distribution, according to the terms of the will.

It is well settled in Minnesota that the proceedings of its Probate Courts are not proceedings between parties but proceedings *in rem,* and that a decree admitting a will to probate is conclusive determination of the rights of all parties interested in the estate.

In Ladd v. Weiskopf, 62 Minn. 29, (35) held:

> "Whether this decree" (a decree of distribution of the Probate Court) "was in accordance with the cor-

rect construction of the will or not, it is binding and conclusive upon all persons interested in the estate of the deceased, whether under disability or not, or whether then in being or not. Greenwood v. Murray, 26 Minn. 259, 2 N. W. 945. Counsel admits the general rule, but insists that it is inapplicable to persons who were not born when the decree was rendered, and who would take, if at all, under the will, and not under or in privity with an person in being at the date of the decree, that such persons cannot be parties to the proceeding, either in person or by representation, and hence are not bound by it. This argument is based upon a false conception of the nature of the proceedings. Proceedings in the probate court are not an action between party and party, but are in the nature of a proceeding *in rem*, acting directly on the res, which is the estate of the deceased. If the Court had jurisdiction of the estate, and the jurisdiction is properly invoked, of which there is no question in this case, a decree of distribution is a judgment *in rem*, which conclusively determines the right of all parties interested in the estate just as fully as a decree in admiralty or any other judgment *in rem*. It is on this ground that it has been held that as respects proceedings for the probate of wills, or on the administration of the estates of deceased persons, it is not necessary to appoint a guardian for minors interested in the estate. Mousseau's Will, 30 Minn. 202, 14 N. W. 887; Huntsman v. Hooper, 32 Minn. 163, 20 N. W. 127. There is no difference in principle between the case of persons in being who are under disability and persons yet unborn. The logic of counsel's argument would be equally applicable to any other decree or order of the probate court affecting the estate of the testator, as, for example, admitting his will to probate; and the result would be that nothing could ever be conclusively determined as to the estate of a deceased person, for often it could not be postively assured that some person might not afterwards come into being who would be interested in the estate."

In Chadbourne v. Hartz, 93 Minn. 233, held:

"A decree by the probate court having jurisdiction, assigning the residue of the estate of a deceased per-

son, is in the nature of a judgment *in rem*, and is conclusive upon all persons interested in such estate."

In Fridley v. Farmers and Mechanics Savings Bank, 136 Minn. 339, the Court held:

> "Where the facts essential to jurisdiction over the subject-matter exist, and the Court has determined from the evidence presented that it has authority to administer a particular estate, and has taken control of the estate by appointing an Executor or Administrator to administer it, the authorities, in the great majority of cases, hold that the order making the appointment is binding and effective until reversed or revoked in a direct proceeding, unless its invalidity appears upon the face of the record, and that it affords full protection to those who, prior to such reversal or revocation, acted in reliance upon it" * * * "Some courts invoke an element of estoppel as a ground for the rule, and say that as the heirs, legatees, creditors and others interested in the estate have the right to appear and contest the proceedings at their inception, if they omit to do so they are not in a position to complain after third parties have acted in reliance upon the validity of such proceedings."

The conclusive effect of the decree in the instant case, and the finding as to the domicile, are not affected by the allegations of the bill that the testator fraudulently removed his property to Minnesota, or that the Executors procured this finding. All these contentions might have been raised by the plaintiff state at the time of the first hearing in the Probate Court, and on a trial *de novo* on appeal.

There is no allegation in the proposed bill of any want of notice, or of any attempt on the part of the Executors, or of anyone else, to prevent the plaintiff state from urging the objections it now makes to the probate of the will.

On the contrary, it appears that the plaintiff state had, prior to the expiration of the six months' period given for appeal, actual notice that the will had been admitted to probate in Minnesota, and used this information, not for the purpose of asserting in the Probate Court its alleged rights in the Minnesota estate, but to institute in Iowa an action "in equity" to restrain witnesses resident in Iowa from giving their testimony to prove the will in Minnesota, in the appeal of defendant Lipman, and to obstruct the process of the courts of Minnesota, and to prevent the Executors from proving the issues of that appeal,—the question of domicile and alleged removal of the assets of the estate to Minnesota before the death of the decedent being necessarily in issue on that appeal, as the trial on appeal is a trial *de novo,* and the burden is on the Executors to establish jurisdiction and the validity of the will. See Subdivisions XV and XX of the bill and statutes of Minnesota before cited.

The State of Iowa claims fraud on the part of decedent in removing his property to Minnesota, and fraud on the part of the Executors in procuring a finding as to decedent's domicile, but does not claim that the State of Iowa, by fraud or otherwise, was deprived of an opportunity of asserting its claims in the Minnesota courts. That its failure so to do was due to a preference for the tribunals of Iowa rather than of Minnesota appears from Subdivision XVI of the proposed bill.

Whether decedent was a resident of Minnesota at the time of his death, or died leaving property in that state, or removed property to Minnesota prior to his death with a fraudulent intent, are all questions of fact, and the determination of the Probate Court was conclusive on these

matters, unless reversed on appeal, and in any event not subject to a collateral attack as is made in the proposed bill.

In the case of Goodrich v. Ferris et al., 214 U. S., page 71 (80), Mr. Chief Justice White said:

> "It is elementary that probate proceedings by which jurisdiction of a probate court is asserted over the estate of a decedent for the purpose of administering the same is in the nature of a proceeding *in rem*, and is therefore one as to which all the world is charged with notice."

In Doran v. Kennedy, 237 U. S. 362, Mr. Justice McKenna, speaking for the Court on the effect of an order of the Probate Court directing the sale of lands belonging to the estate, during administration, said:

> "Whether there were facts to warrant a sale in any given case was a question which the Probate Court was obliged to determine, and which that Court and no other had jurisdiction to determine. This question was considered by the Probate Court, and was determined adversely to plaintiff. Then was the time for the plaintiff to present her contention in Court. No fraud or artifice was practiced to prevent her doing so. In fact, in her brief she claims that she did in fact appear. If the determination of the Probate Court was wrong, her remedy was to appeal from that determination.
>
> The heirs were entitled to one day in Court, but not to two. When a Probate Court with jurisdiction over property, for purposes of administration, and for purposes of sale in certain cases, orders and confirms a sale of the same, it is the right and duty of an heir to litigate the propriety of such orders in that proceeding. The heir cannot sit by, permit the sale to be made, and then bring another and a collateral action in another Court to litigate again the propriety of the sale, and to procure a decree declaring it to be void. Such a practice would place no end to litigation."

In the case of Christianson v. King County, 239 U. S. 356, Mr. Justice Hughes, speaking for the Court on the effect of a decree of the Probate Court of King County, Washington, declaring that the estate of a deceased had escheated to the County of King, said:

> "Despite the informality of the petition, the appointment of the administrator was not void, and not being void it is not subject to collateral attack." (Citation of authorities.) "It appears that subsequently the Probate Court, after opportunity had been afforded to discover heirs, entertained a petition of the administrator for a final account and distribution. The statutory notice (Probate Practice Act, 1863, § 319) was published and on the return day the proceeding was duly continued, and on hearing the decree was entered settling the account, finding that there were no heirs and directing distribution of the real property as described to the County of King. This proceeding was essentially *in rem*." (Citing authorities from the Supreme Court of Washington.) "It was competent for the Court to inquire whether there were heirs and if there were such to determine who were entitled to take according to the order prescribed by the statute, and also if it was found that there were no heirs to make the distribution to the County, as the statute required. It is apparent that there was no deprivation of property without due process of law. The Court after appropriate notice did determine that there were no heirs, and its decree, being the act of a Court of competent jurisdiction bound all the world, including the plaintiff in error. It cannot be regarded as open to attack in this action."

In the case of Simmons v. Saul, 138 U. S. 439, the judgment of a parish court of Louisiana appointing an administrator was assailed on the ground, among others, that the Court did not have jurisdiction because the decedent was not a resident of the parish over which that Court had jurisdiction. The court in consideration of this point,

approved the following from a decision of the Supreme Court of Louisiana:

> "The late parish Court at St. Landry had probate jurisdiction and was exclusively competent to grant and issue letters of administration in all successions properly opened in that Court. Defendants contend that this succession was not properly opened in that Court, for the reasons urged in their exceptions. This denial presents a question of fact: That the deceased was not a resident of this parish and that having left heirs who were residents of this state, his succession was not vacant so as to necessitate or justify the appointment of a curator. These questions can be looked into and adjudicated upon only in a direct action before the same Court, or before the tribunal now vested with original probate jurisdiction in the parish of St. Landry. No principle of our jurisprudence is more firmly established than the following: Letters of administration make full proof of the party's capacity until they be revoked. They must have their effect, and the regularity of the proceedings on which they issued cannot be examined collaterally. This rule was laid down in the early days of our jurisprudence and has been sanctioned, confirmed and consecrated by an unbroken line of decisions of this Court down to the present day.
>
> The Court further approves the rule in re Broderick's Will, 21 Wall. 506, stating that this case 'upon this point is absolutely conclusive against the appellants' and that 'with the single exception that that case was brought to set aside the probate of a will and this was brought to set aside the granting of letters of administration upon a succession, the two cases are as much alike as two photographs of the same person, the lineaments of the alleged fraud being more distinctly brought out in the bill in the case of Broderick's Will than in the bill in this case. Both were bills in equity brought by the alleged heirs-at-law of the decedent to set aside and annul a decree of a Court of Probate, and all the subsequent proceedings, including the order of sale and the sale itself. Both alleged fraud in the procurement of the respective decrees, and knowledge of the fraud by the defendants—

actual knowledge in the Broderick case, and constructive knowledge in this case.' "

In the case of Broderick's Will, supra, Mr. Justice Bradley, speaking for the Court on the conclusive effect of the probate of a will, said:

"The public interests require that the estates of deceased persons, being deprived of a master and subject to all manner of claims, should at once devolve to a new and competent ownership, and consequently there should be some convenient jurisdiction and mode of proceedings by which this devolution may be effected, with the least chance of injustice and fraud, and that the results attained should be firm and perpetual. The Courts invested with this jurisdiction should have ample powers, both of process and investigation, and sufficient opportunities should be given to check and revise proceedings tainted with mistake, fraud or illegality. XXXX

It needs no argument to show, as it is perfectly apparent, that their objections to the will, or the probate thereof, could have been raised, if it was not raised, in the Probate Court during proceedings instituted for proving the will, or at any time within a year after probate was granted, and that the relief sought by declaring the purchaser's trustees for the benefit of the complainants, would have been fully compassed by denying probate of the will. On the establishment,or non-establishment of the will depended the entire right of the parties, and that was a question entirely and exclusively within the jurisdiction of the Probate Court. In such a case a Court of equity will not interfere if it has no jurisdiction to do so. The Probate Court was fully competent to afford adequate relief." * * * "The world must move on, and those who claim an interest in persons or things must be charged with knowledge of their status and condition, and of the vicissitudes to which they are subject. This is the foundation of all judicial proceedings *in rem*."

THE SLIMMER WILL HAVING BEEN PROVED IN A DUE PROCEEDING IN REM, IN THE MINNESOTA COURT, THE FEDERAL COURTS ARE WITHOUT JURISDICTION TO SET ASIDE ITS PROBATE.

Under the full faith and credit clause of the Constitution of the United States, as made effective by statute, decrees of the Probate Court are entitled "to have such value and credit given in every Court" * * * "within the United States, as they have by the law and usage of the Courts of the State." See Section 905, R. S. 1878, page 727. We have shown that "by the law and usage" of Minnesota, this decree of its Probate Court is a judgment *in rem*, conclusive as to property in Minnesota, and not subject to a collateral attack, and reviewable only on appeal in the manner provided by law. APPLEBY v WATKINS, 95 Minn., 455.

The only exception to the rule that Courts of the United States will not entertain suits to set aside the probate of wills, is that when the state law gives one interested in an estate the right, in a suit between parties, to assail probate proceedings, the same right will be recognized in the Federal Courts, if the requisite diversity of citizenship exists. This in effect is giving a suitor in the Federal Courts of the United States the same rights as a suitor in the state courts. Whether probate proceedings shall be *in rem* or between parties is a matter of public policy and state regulation which each state may determine for itself, subject only to due process.

The distinction as to what probate proceedings are between parties and *in rem* is clearly stated in the case of O'Callahan v. O'Brien, 199 U. S. 89.

That action was brought in the Circuit Court of the United States, for the District of Washington, to set aside the probate in the Superior Court of Kings County, Washington, of a nuncupative will, on the ground that the will was fraudulent; that the Court was without jurisdiction, and that no legal citation had been issued. The determination of the Circuit Court of Appeals that the Court was without jurisdiction on the case made by the will, was affirmed.

Mr. Chief Justice White, speaking for the Court, after reviewing the authorities, said:

> "An analysis of the case, in our opinion clearly establishes the following:
>
> First. That as the authority to make wills is derived from the State, and the requirements of probate is but a regulation to make a will effective, matters of pure probate, in the strict sense of the words, are not within the jurisdiction of courts of the United States.
>
> Second. That where a state law, statutory or customary, gives to the citizens of the state, in an action or suit *inter partes*, the right to question at law the probate of a will, or to assail probate in a suit in equity, the Courts of the United States, in administering the rights of citizens of other states or aliens, will enforce such remedies.
>
> The only dispute possible under these propositions may arise from the difference of opinion as to the true significance of the expression '*action or suit inter partes.*' The cited authorities establish that the words referred to must relate only to independent controversies *inter partes*, and not to mere controversies which may arise on an application to probate a will, because the state law provides for notice, or to disputes concerning the setting aside of a probate, when the remedy to set aside afforded by the state law is a mere continuation of the probate proceedings; that is to say, merely a method of procedure ancillary to the original probate, allowed by the state law for

the purpose of giving to the probate its ultimate and final effect." * * * "We are of opinion that the sections in question" (from constitution and statutes of the State of Washington) "authorize a proceeding for contest only before the Court which has admitted the will to probate, or rejected the application made for the probate, and that the authority thus conferred concerning the contest is an essential part of the probate procedure created by the laws of Washington, and does not therefore cause a contest when filed to become an ordinary suit between parties."

"This is plainly indicated by the fact that the proceeding provided by the statute concerns not only revocation of the probate of the will, but also the right to petition for the probate of a will where the application to probate it had been previously rejected. The context of the legislation in question also clearly establishes that the authorized proceeding is but supplementary to, and a continuation of the original proceeding in probate. This is indicated both by the form of the petition, which is required to be filed, and the character of the proof which may be offered or considered on that petition. That the statute does not contemplate a formal suit, but a mere summary and ancillary proceeding, is shown by the circumstance that the petitioner is merely required to state in his petition 'his objections and exceptions to said will or the rejection thereof,' and on the statement of these objections in the petition, without the formality of the technical pleadings customary in ordinary suits, *inter partes*, the statute requires that specified issues be then made up for hearing. And further, the terms of § 876 treat the contest as not an ordinary suit between parties, since it is made the duty of the Court to revoke the probate, if for any reason the will is invalid, or if '*it is not sufficiently proved* to have been the last will of the testator.' Moreover it is evident that the statute contemplates that the Court when acting on a contest filed under its provisions, is not confined to the exertion of powers which would properly be exerted in an ordinary suit *inter partes*, since the statute causes a decree in favor of the petitioner, revoking a will already admitted to probate, to inure not only to the benefit of the particular contestant,

but to be operative as to the whole world. This follows from the provision of the statute saying that if the court finds in favor of the petitioner who sought the revocation of the probate, 'the will and the probate thereof shall be annulled and revoked.' * * * It follows that as the Circuit Court of the United States had no jurisdiction to admit the will to probate, or entertain a pure probate proceeding, and as the remedy afforded by the laws of Washington to secure the probate or revocation of the probate of a will were proceedings of a purely probate character, and not an action or suit *inter partes*, the Circuit Court of Appeals correctly decided that the Circuit Court, although there was diversity of citizenship, was without jurisdiction of the cause, so far as the bill sought the declaration of the non-existence of the will, and consequent nullity of the probate." * * *

In Higgins v. Eaton, 202 Fed. 75, the Court says:

"Now, if anything is well settled by the decisions of the Supreme Court of the United States, from the case of the Broderick Will, 20 Wall. 503, down to Farrell v. O'Brien, 199 U. S. 89, it is that Federal Courts, as Courts of equity, will not (with the exception which will be noted) entertain jurisdiction of suits to set aside probate of wills" * * * "these reasons (in the Broderick Will case) lead equally to the conclusion that Federal Courts will not grant relief which will in effect set aside the probate of a will or codicil, if probate proceedings be in the nature of proceedings in rem in which all persons interested are deemed parties, and by which they are concluded,—they are concluded just as much from bringing suits in the face of such proceedings as they are from suing to set them aside. The thing adjudicated is the valid execution of the will or codicil, and the adjudication has the same effect upon one kind of a suit as upon the other. The exception which has been made by the Supreme Court to the rule that Federal Courts will not entertain suits to set aside the probate of wills, is that when a state law gives a person interested in an estate the right in a suit *inter partes* to assail probate proceedings, a similar right will be accorded in Federal Courts where the requisite diversity of citi-

zenship exists. See Farrell v. O'Brien, supra. This, however, merely gives a suitor in the Federal Courts the same rights as a suitor in the state court, and really constitutes no exception to the underlying principle involved."

The decision further points out the concurrent jurisdiction which Federal Courts have with probate courts. This concurrent jurisdiction is consistent with and dependent upon the proved will, and is not in conflict with the adjudication of probate, such as an action to construe a will, suits by legatees for their legacies, or devisees for their lands, and creditors to recover their claims.

The last word upon this phase of the questions involved in this application is found in the decision of this Court in Sutton v. English, decided March 4, 1918.

We quote the following from the opinion of Mr. Justice Pitney:

"By a series of decisions in this court it has been established that since it does not pertain to the general jurisdiction of a court of equity to set aside a will or the probate thereof, or to administer upon the estates of decedents in rem, matters of this character are not within the ordinary equity jurisdiction of the Federal courts; that as the authority to make wills is derived from the states, and the requirement of probate is but a regulation to make a will effective, matters of strict probate are not within the jurisdiction of courts of the United States; that where a state, by statute or customs, gives to parties, interested the right to bring an action or suit inter partes, either at law or in equity, to annul a will or to set aside the probate, the courts of the United States, where diversity of citizenship and a sufficient amount in controversy appear, can enforce the same remedy, but that this relates only to independent suits, and not to procedure merely incidental or ancillary to the probate; and further, that questions relating to the inter-

> ests of heirs, devisees, or legatees, or trusts affecting such interests, which may be determined without interfering with probate or assuming general administration, are within the jurisdiction of the Federal courts where diversity of citizenship exists and the requisite amount is in controversy."

THE JUDICIAL TRIBUNALS OF MINNESOTA HAVE COMPLETE JURISDICTION TO ADMINISTER PROPERTY WITHIN THE TERRITORIAL LIMITS OF THE STATE, REGARDLESS OF THE DOMICILE OF THE OWNER.

The jurisdiction of the Minnesota Court to assume control of and sequester property within Minnesota belonging to the estate of Abraham Slimmer in no way depends upon his domicile.

That the bulk of the estate was physically within Minnesota appears sufficiently from the proposed bill and that it is now in the possession and custody of the probate court of Ramsey County through the representative appointed by that court appears affirmatively.

We have therefore only to consider the right of the Minnesota courts to adjudicate as to conflicting claims which may be advanced as to property in Minnesota.

This is equivalent to asking whether Minnesota possesses the first attribute of sovereignty, a question to which, of course, there is but one answer.

Speaking of the sovereign powers of the State, the Court in Penoyer v. Neff, 95 U. S. 714, said:

> "One of these principles in that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory" * * * "and also to regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed and

transferred." * * * "The several States are of equal dignity and authority and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists as an elementary principle, that the laws of one State have no operation outside its territory, except so far as allowed by comity, and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decision."

Overby v. Gordon, 177 U. S. 214, was a case presenting many of the features alleged in the proposed bill and is, we submit, decisive against the claim advanced by the State of Iowa.

In that case probate proceedings were instituted in the State of Georgia upon the estate of one Haralson, who had died in Georgia and had his domicile in the City of Washington, where also the bulk of his estate, a bank deposit, was physically situated.

Probate proceedings were also begun in the proper court in the District of Columbia and pending a hearing in that court and after notice of the pendency of the proceedings the Georgia administration drew the deposit from the Washington bank and removed it to Georgia. The right and jurisdiction of the Georgia court to administer upon the assets found within its territorial jurisdiction was affirmed as was the equal right of the courts of the District of Columbia to administer upon the property found there. The quotation we have given from Pennoyer v. Neff was cited with approval and references given to Story Confl. of Laws, Chap. 2, and Wheaton Int. Law, Part 2, Ch. 2, where it will be found that the principle that every state has the sovereign power to control and administer property, both personal or real, situated within its territory, is traced to its source.

Tilt v. Kelsey, 207 U. S. 43.
Magruder v. Drury, 235 U. S. 106.

This conflict which arise as to assets found in different jurisdictions, though forming part of but one estate, was very recently considered by this court.

Baker v. Baker, Eccles & Co., 242 U. S. 394.

In the course of the opinion in that case, delivered by Mr. Justice Pitney, it was said, p. 401:

> "* * * No state need allow property of a decedent to be taken without its borders until debts due to its own citizens have been satisfied and there is nothing in the constitution of the United States, aside from the full faith and credit clause, to prevent a state from giving a like protection to its own citizens or residents who are interested in the surplus after payment of debts."

These considerations and decisions fully support the holding of the Supreme Court of Minnesota in

Putnam v. Pitney, 45 Minn. 242.

to the effect that a foreign will may be probated in Minnesota, the property within the state sequestered, the debts paid and the residue delivered to the general administrator appointed in the state of the decedent's domicile.

In this discussion we are confined to the allegations of the proposed bill. Whether decedent's domicile was in fact Iowa or Minnesota is immaterial, and so also is the fact that the State of Iowa may have, by its wilful refusal to submit its claims to the tribunals of Minnesota, lost its right to do so now.

The possession of the Probate Court of Ramsey County, through the defendant executors, of decedent's property gave to that Court the power of determining all controver-

sies concerning that property, including the question of domicile and the alleged fraud raised by the bill.

Byers v. McAuley, 149 U. S. 608.

In Moran v. Sturges, 154 U. S. 256, Mr. Justice Grier said:

> "It is a doctrine of law too long established to require a citation of authorities that where a Court has jurisdiction it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment till reversed, is regarded as binding in every other Court, and that where the jurisdiction of a Court and the right of a plaintiff to prosecute his suit in it have once attached, that right cannot be arrested or taken away by proceedings in another Court. These rules have their foundation, not merely in comity, but of necessity, for if one may enjoin, the other may retort by injunction, and thus the parties be without remedy, being liable to a process for contempt in one, if they dare to proceed in the other. Neither can one take property of the other by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice."

In Smith v. Jennings, 238 Fed. 48, the Court said:

> "The solution of the question presented by the appeal depends upon the extent of the jurisdiction of the United States District Court sitting in equity over the general administration of the estates of decedents in cases where a state court of general jurisdiction in matters of probate has already acquired jurisdiction of the estate. That the courts of the United States, sitting in equity, have no general jurisdiction in matters of probate and the administration of the estates of decedents is well settled." * * * "We think the record shows that the court of ordinary was in the actual possession of the assets of the estate when the bill was filed, through its temporary administrators. That they were in actual possession is clear. It is claimed that, owing to irregularities

and fraud in their appointment, they should not be considered officers of the court which appointed them, and hence that their possession was not its possession. It is claimed that to procure their appointment and qualification they misrepresented to the ordinary their status as creditors of the intestate and the amount of the personal assets of the estate. We do not think that such irregularities, if proven, would divest the temporary administrators of their official character in a collateral proceeding in a court of concurrent jurisdiction, though it might subject them to removal by the court of their appointment."

MINNESOTA A CREDITOR.

Decedent's property consisted "entirely of promissory notes," except $2,500.00 in Liberty Bonds (subdivision III, Proposed Bill), all of which were in Minnesota at the time of his death, except the note for $3,000.00 and his personal effects, (subdivision V, Proposed Bill).

The State of Minnesota had and has, therefore, a claim upon this property for the amount of the transfer or inheritance tax; its *situs* for such purpose being beyond dispute.

By the Statutes of Minnesota, a tax is imposed upon real and personal property "when a transfer is by will or intestate law, of *property within the state or within its jurisdiction*, and decedent was a *non-resident* of the state at the time of his death," (Sec. 2271, G. S. 1913), and it is the duty of the personal representative to deduct the tax from the estate, and on failure so to do, he is personally liable for its payment to the extent of the property which came into his hands. (Secs. 2274 and 2276, G. S. 1913.)

If, as charged, the decedent brought this property to Minnesota during his lifetime, with an unlawful purpose, such purpose in no way lessens the right of Minnesota to

enforce the collection of its taxes, and it became the duty of the individual defendants in Minnesota, who had possession of the property, to maintain its *situs* so as to permit the enforcement of the laws of Minnesota.

These considerations are not altered by the loose charges of fraud found in the proposed bill. When the State of Iowa seeks relief through the regular channels of Judicial procedure, the defendants will gladly meet those charges.

This Court has upheld the right of state to tax property of this character, when found within its limits.

New Orleans v. Stempel, 175 U. S. 309.

In that case it was said, (p. 322):

> "It is well settled that bank bills and municipal bonds are in such a concrete tanglible form that they are subject to taxation where found, irrespective of the domicile of the owner; are subject to levy and sale on execution, and to seizure and delivery under replevin; and yet they are but promises to pay—evidences of existing indebtedness. Notes and mortgages are of the same nature; and while they may not have become so generally recognized as tangible personal property, yet they have such a concrete form that we see no reason why a state may not declare that if found within its limits they shall be subject to taxation."

which is in entire harmony with the Minnesota rule.

State ex rel. Graff v. Probate Court, 128 Minn. 371.

IV.

THE PROPOSED BILL OF COMPLAINT DOES NOT STATE ANY GROUND FOR EQUITABLE RELIEF, AND IT APPEARS UPON ITS FACE THAT COMPLAINANT HAD AN ADEQUATE REMEDY AT LAW.

The plaintiff has never appeared in, or submitted its claim or contentions to the Courts of Minnesota, and has permitted the Courts of that State to assume jurisdiction and control of the entire estate from the date of Mr. Slimmer's death, on August 15th, 1917.

The executors, for the purpose of securing testimony to prove the issues of the appeal then pending in the District Court of Ramsey County, gave notice to take depositions in Iowa of witnesses residing in that State.

On January 7th, 1918, the State of Iowa instituted in the District Court of that State, an action "in equity," and procured in that State, on the same day the bill was filed, an injunction restraining the defendant executors from taking these depositions, and also restraining the witnesses "from attending before and giving their testimony to said Hardie," (the Notary), "and from appearing before and giving their testimony to any Court in the State of Minnesota."

The executors were non-residents, and were not served with process, and the suit began and ended on the same day it was brought, and when its purpose was accomplished, namely, the obstruction of the Minnesota Courts and the prevention of the executors from proving the issues of the appeal then pending.

The alleged claim of the State of Iowa is for a personal property tax for the five years preceding Mr. Slimmer's death.

It is alleged that he "for many years" was a resident of the city of Dubuque, Iowa, and during the five years preceding his death, his property was of the value of about Five hundred and fifty thousand Dollars, and that he intending to defraud the State of Iowa, pretended to be a resident of St. Paul, Minnesota, and placed his entire estate, (except about Three thousand dollars), in the custody of one of the executors in Minnesota.

It appears, however, that Mr. Slimmer during this five-year period, challenged the right of the State of Iowa to collect this tax, and "refused" to return his property for taxation.

Nearly eight months after the death of decedent, and after the Courts of Minnesota had rightfully assumed jurisdiction and control over property within that state leave is asked to file this proposed bill in which this Court is asked to direct that all proceedings in Minnesota be dismissed; that over half a million dollars in securities be transferred from the executors in Minnesota to the administrator in Iowa, for the sole purpose of permitting the State of Iowa to litigate in a convenient jurisdiction, of its own selection, this stale and doubtful claim.

It is not claimed that the will was not properly presented to the Probate Court of Ramsey County, nor that the published notice required by the statute was not given. Section 7229 before cited gives any party aggrieved six months to appeal from the order of the Probate Court, admitting the will to probate, and it further appears that the plaintiff State had, prior to the expiration of the time

fixed for appeal, actual notice of the proceeding pending in Minnesota, and decided not to appear in Minnesota and there litigate this question of domicile. And it further appears that it was the deliberate choice of the State of Iowa, not only to ignore the proceedings in Minnesota, but to obstruct its Courts in the administration of justice. We feel that this Court should not, even if such a course was within its equitable powers, require the beneficiaries under the will to submit to the delay, expense and loss incident to a re-trial in this Court of the issues involved in the Courts of Minnesota, and which plaintiff State deliberately declined to litigate there.

It is respectfully submitted that leave to file the proposed bill should be refused.

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EDWARD T. YOUNG,
ALEXANDER E. HORN,
Solicitors for Abraham Slimmer, Jr.,
and Charles Bechhoefer.

THOMAS D. O'BRIEN,
St. Paul, Minn.,
Counsel.

ADDENDA.

PROBATE COURTS—There shall be established in each organized County in the State a probate court, which shall be a court of record, and be held at such times and places as may be prescribed by law. It shall be held by one Judge, who shall be elected by the voters of the county for the term of two years. He shall be a resident of such county at the time of his election, and reside therein during his continuance in office; and his compensation shall be provided by law. He may appoint his own clerk, where none has been elected; but the legislature may authorize the election, by the electors of any county, of one clerk or register of probate for such county, whose powers, duties, term of office and compensation shall be prescribed by law. The Probate Court shall have jurisdiction over the estates of deceased persons and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution.

Sec. 7, Article VI of the Constitution of Minnesota.

COUNTIES IN WHICH ADMINISTRATION SHALL BE HAD—Wills shall be proved and administration upon the estates of decedents shall be granted:

1. If the decedent, at the time of his death, was a resident of this state, in the county of such residence;

(2) If a non-resident, dying within or without this state, in any county wherein he left property, or into which any property belonging to his estate shall come; and such administration first legally granted shall extend to all the assets of the decedent in this state.

§ 7205 G. S. 1913.

ANCILLARY ADMINISTRATION—In all cases of administration in this state of the estates of decedents who are non-residents, upon payment of the expenses of administration, and of the debts here proved, the residue of the personalty shall be distributed according to the terms of the will applicable thereto, if there be a will, or, according to the law of the decedent's domicile. Or the court, in its discretion, may direct that it be transmitted to the personal representative of the decedent at the place of such domicile, to be disposed of by him. And the real estate not sold in the course of administration shall be assigned according to the will, if there be one; otherwise according to the laws of this state.

§ 7278, G. S. 1913.

PROBATE PRACTICE.

PROCEEDINGS, HOW BEGUN—Every proceeding in the probate court shall be commenced by petition, briefly setting forth the ground of the application, and signed by or on behalf of the party making the same, and be verified as in the case of pleadings in civil actions.

§ 7227, G. S. 1913.

NOTICE OF HEARING, WHEN REQUIRED—Before proceeding, the court shall require notice to be given to all persons interested, in the following cases:

1. In granting letters of administration;

2. In the allowance of any last will and testament, and granting letters thereon;

3. In hearing the account of an executor or administrator;

4. In distributing any estate to heirs, legatees, or devisees;

5. In licensing the sale, mortgage, or lease of real estate.

In all other cases, unless in this chapter otherwise provided, such notice shall be given as the court may direct.

§ 7228, G. S. 1913.

NOTICE BY CITATION—ADDITIONAL NOTICE—For the purposes of such notice, the court shall issue its citation, requiring all persons interested to show cause, if any they have, at a time and place specified, why the petition therein referred to should not be granted; and such citation shall be served by three weeks' published notice. The court, in its discretion, may cause other or further notice to be given to such persons as it may deem proper.

§ 7229, G. S. 1913.

PROBATE OF WILLS.

WHO MAY PETITION FOR—Any executor, devisee, or legatee named in a will, or any other person interested in the estate, at any time after the death of the testator, may petition the probate court of the proper county to have the will proved, whether the same be in his possession or not, or is lost or destroyed, or beyond the jurisdiction of the state, or a nuncupative will.

§ 7266, G. S. 1913.

CONTENTS OF PETITION—Every petition for the probate of a will shall show:

1. The jurisdictional facts.

2. The name and residence of the person named as executor, if known, and the name of the person for whom letters are prayed.

3. The names, ages and places of residence of the heirs and devisees of the decedent, so far as known to the petitioner.

4. The probable value and character of the property of the estate, real and personal.

No defect of form or in the statement of facts contained in the petition shall invalidate the probate of a will.

§ 7267, G. S. 1913.

FILING PETITION—NOTICE—PROOF AND ALLOWANCE OF WILL—Such petition shall be filed in the probate court, and thereupon the court shall appoint a time and place for proving the will, and cause notice thereof to be given as provided by law. At the time appointed, the court shall hear proof and allow or disallow the will. If the probate is not contested, the court may admit the same to probate on the testimony of one of the subscribing witnesses only, if such witness testifies that the will was executed in all respects as required by law, and that the testator was of full age and sound mind at the time of its execution.

§ 7268, G. S. 1913.

TESTIMONY OF OTHER THAN SUBSCRIBING WITNESSES—If none of the subscribing witnesses reside in the state at the time appointed for proving the will, the Court, in its dis-

cretion, may admit the testimony of other witnesses to prove the sanity of the testator and the due execution of the will, and as evidence of such execution may admit proof of the handwriting of the testator and of the subscribing witnesses.

§ 7269, G. S. 1913.

OBJECTIONS, WHEN FILED—No one shall be heard to contest the validity of a will unless the grounds of objection thereto are stated in writing and filed in court before the time appointed for proving the will.

§ 7270, G. S. 1913.

APPEALS.

IN WHAT CASES ALLOWED—An appeal to the District Court from a judgment, order, or decree of the probate court may be taken by any party aggrieved, in the following cases:

1. An order admitting a will to probate and record, or refusing the same.

2. An order appointing an executor, administrator, or guardian, or removing him, or refusing to make such appointment or removal.

§ 7490, G. S. 1913.

APPEAL, HOW AND WHEN TAKEN—No appeal shall be effectual for any purpose unless the following requisites are complied with by the appellant within thirty days after notice of the order, judgment, or decree appealed from:

1. The appellant shall serve a written notice upon the adverse party, his agent or attorney, who appeared in court, and when there has been no appearance, by delivering a copy of such notice to the probate judge for such party. Such notice shall specify the order, judgment or decree, or such part thereof as is appealed from, be signed by the appellant or his attorney, and be served in the same manner as notices in civil actions, and, together with proof of service thereof, be filed in the probate court.

2. In case any person other than the representative appeals, he shall execute a bond, with sureties, to the judge, conditioned that he will prosecute his appeal with due diligence to a final determination, pay all costs and disbursements, and abide the order of court therein. But no appeal from an order, judgment or decree shall be taken after six months from the entry thereof.

§ 7492, G. S. 1913.

NOTICE OF TRIAL, ETC.—Upon appeal the cause may be brought on for trial by either party on eight days' notice, which shall be served upon the attorney of the adverse party, or, if he have none, shall be deposited for him with the Clerk of the District Court. On or before the first day of the term for which the cause is noticed, the appellant shall cause it to be entered on the calendar; otherwise the appeal shall be dismissed. When placed on the calendar, the cause shall be tried and determined in the same manner as if originally commenced in such court.

§ 7495, G. S. 1913.

APPEAL FROM DISTRICT COURT—A judgment or order in a civil action in a district court may be removed to the su-

preme court by appeal, as provided in this chapter, and not otherwise.

§ 7993, G. S. 1913.

TAXATION ON INHERITANCES, ETC.—A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporation within the state for strictly county, town or municipal purposes, in the following cases:

(1) When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

(2) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death.

(3) When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

(4) Such tax shall be imposed when any such person or corporation become beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after the passage of this act.

(5) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

§ 2271, G. S. 1913.

DUTIES OF ADMISISTRATOR, ETC.—Any administrator, executor or trustee having in charge or in trust any property for distribution embraced in or belonging to any inheritance, devise, bequest, legacy or gift, subject to the tax thereon as imposed by this act, shall deduct the tax therefrom, and within thirty days thereafter he shall pay over the same to the county treasurer as herein provided. If such property be not in money, he shall collect the tax on such inheritance, devise, bequest, legacy or gift upon the appraised value thereof, from the person entitled thereto. He shall not deliver, or be compelled to deliver, any prop-

erty embraced in any inheritance, devise, bequest, legacy or gift, subject to tax under this act, to any person until he shall have collected the tax thereon.

§ 2274, G. S. 1913.

TAX TO BE LIEN—PERSONAL LIABILITY—Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property is transferred and the administrators, executors and trustees of every estate embracing such property shall be personally liable for such tax, until its payment, to the extent of the value of such property.

§ 2276, G. S. 1913.

TRANSFER BY FOREIGN EXECUTORS, ETC.—PERSONAL PROPERTY OF NON-RESIDENT DECEDENT—PROCEEDINGS BEFORE ATTORNEY GENERAL—SHARES OF STOCK—APPEAL—WHERE LAW OF DOMICILE EXEMPTS TRANSFERS OF PERSONAL PROPERTY OF RESIDENTS OF MINNESOTA—Subdivision 1. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the state treasurer on the transfer thereof, and no such assignment or transfer shall be valid until such tax is paid.

If any non-resident of this state dies owning personal property in this state, such property may be transferred or assigned by the personal representative of, or trustee for the decedent, only after such representative or trustee shall have procured a certificate from the attorney general consenting to the transfer of such property. Such consent shall be issued by the attorney general only in case

there is no tax due hereunder; or in case there is a tax, when the same shall have been paid.

Any personal representative, trustee, heir or legatee of a non-resident decedent desiring to transfer property having its situs in this state may make application to the attorney general for the determination of whether there is any tax due to the state on account of the transfer of the decedent's property and such applicant shall furnish to the attorney general therewith an affidavit setting forth a description of all property owned by the decedent at the time of his death and having its situs in the state of Minnesota, as the value of such property at the time of said decedent's death; also when required by the attorney general, a description of and statement of the true value of all the property owned by the decedent at the time of his death and having its situs outside the state of Minnesota, and also a schedule or statement of the valid claims against the estate of the decedent, including the expenses of his last sickness and funeral and the expenses of administering his estate. Such person shall also, on request of the attorney general, furnish to the latter a certified copy of the last will of the decedent in case he died testate, or an affidavit setting forth the names, ages and residences of the heirs at law of the decedent in case he died intestate and the proportion of the entire estate of such decedent inherited by each of said persons, and the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made. Such affidavits shall be subscribed and sworn to by the personal representative of the decedent or some other person having knowledge of the facts therein set forth.

The statements in any such affidavits as to value or otherwise shall not be binding on the attorney general in case he believes the same to be untrue. From the information so furnished to him and such other information as he may have with reference thereto, the attorney general shall, with reasonable expedition, determine the amount of tax, if any, due to the state under the provisions of this act and notify the person making the application of the amount thereof claimed to be due. On payment of the tax so determined to be due or in case there is no tax due to the state, the attorney general shall issue a consent to the transfer of the property so owned by the decedent.

No corporation organized under the laws of the state of Minnesota shall transfer on its books any shares of its capital stock standing in the name of a non-resident decedent, or in trust for a non-resident decedent, without the consent of the attorney general first procured as hereinbefore provided for. Any corporation violating the provisions of this section shall be liable to the state for the amount of any tax due to the state on a transfer of any such shares of stock, and in addition thereto a penalty equal to ten per cent of the amount of such tax; to be recovered in a civil action in the name of and for the benefit of the state.

Any person aggrieved by the determination of the attorney general in any matter hereinbefore provided for, may, within twenty days thereafter appeal to the district court of Hennepin county, or Ramsey county, Minnesota, by filing with the attorney general a notice in writing setting forth his objections to such determination and that he appeals therefrom and thereupon within ten days thereafter the attorney general shall transmit the original papers and records which have been filed with him in rela-

tion to such application for consent, to the clerk of the district court to which the appeal shall have been taken, and thereupon said court shall acquire jurisdiction of such application and proceeding. Upon eight days' notice given to the attorney general by the appellant, the matter may be brought on for hearing and determination by such court either in term time or vacation, at a general or special term of said court, or at chambers as may be directed by order of the court. The said court may determine any and all questions of law and fact necessary to the enforcement of the provisions of this act according to its intent and purpose, and may by order direct the correction, amendment or modification or (of) any determination made by the attorney general.

On such hearing either party may introduce the testimony of witnesses and other evidence in the same manner and subject to the same rules which govern in civil actions. When necessary, the court may adjourn or continue its hearings from time to time, to enable the parties to secure the attendance of witnesses or the taking of depositions. Depositions may be taken and used in such proceedings in the same manner as is now provided by law for the taking of depositions in civil actions.

The attorney general and any person aggrieved by the order of the district court may appeal to the supreme court from any such order made by said courts, within the time and in the manner now provided by law for the taking of appeals from orders in civil actions.

§ 2281, G. S. 1913.

STATE OF IOWA *v.* SLIMMER ET AL.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

No. —, Original. Argued April 15, 1918.—Decided December 9, 1918.

A motion to file an original bill will be denied when the complaining State is clearly not entitled to the relief sought. P. 120.

Where the only effective relief sought is to enjoin the administration by the courts of another State of personal property (in this case notes and bonds) located there at the time of the owner's death, relief must clearly be denied; because, even though the property may have been fraudulently placed there to avoid taxation in the complainant State, which is alleged to be the domicile of the owner, the State of the actual situs had the right to administer the property. *Id.*

Motion for leave to file bill of complaint denied.

THE case is stated in the opinion.

Mr. H. M. Havner, Attorney General of the State of Iowa, with whom *Mr. Burton E. Sweet* was on the brief, for complainant, contended:

That the decedent was at the time of his death and previously a resident of Iowa, and the property had been placed and kept in Minnesota, and the Minnesota proceedings set on foot, to defraud Iowa of her rights of taxation. This was alleged in the bill, whose allegations stood unchallenged. Looking at the matter from the international and interstate standpoints, correct doctrine required that original probate and principal administration be had in Iowa, the State of domicile. Iowa had a special interest in insisting that this be done because under her laws, upon the admitted facts, she was entitled to collect back taxes upon the property for five years during which they had been eluded, to tax it during administration, and to tax for collateral inheritance. And under the laws of

Iowa it required primary administration to avail of these rights.

Even assuming that Minnesota would entertain these claims in her courts, relief would depend on their finding as to domicile; and, Iowa, a sovereign State, should not be compelled to litigate her rights in a possibly hostile forum. Indeed, the very purpose of the Constitution, Art. III, § 2, par. 2, and the act of Congress (Jud. Code, § 233), concerning the original jurisdiction of this court, was to furnish an impartial tribunal in such cases. See *Chisholm* v. *Georgia*, 2 Dall. 419, 475; *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265, 289. That jurisdiction depends upon the character of the parties and not upon the nature of the action. *California* v. *Southern Pacific Co.*, 157 U. S. 229. If the lower federal courts will entertain a bill between citizens with reference to a testator's domicile, where that question is material (*Harrison* v. *Nixon*, 9 Pet. 483), a sovereign State has a right to have that question determined here in an original action.

On the face of the bill, the original jurisdiction exists. It is no answer to say that Iowa may go to the courts of Minnesota. If she did so, there would be no right to have an adverse decision reviewed by this court, because there would be no federal question. Nor is it an answer that cases of this character would unnecessarily burden the docket of this court. If jurisdiction exists under the Constitution, Iowa has a right to a determination.

Mr. Thomas D. O'Brien, with whom *Mr. Edward T. Young* and *Mr. Alexander E. Horn* were on the brief, for defendants.

Mr. Clifford L. Hilton, Attorney General of the State of Minnesota, and *Mr. Egbert S. Oakley*, Assistant Attorney General of the State of Minnesota, in a separate brief on behalf of that State, contended:

It is for the state legislatures to prescribe how property

is to be assessed and to provide the remedies by means of which the payment of the taxes levied shall be accomplished. The legislative remedies are exclusive, and if they fail, the collection of the tax must also fail. *Plymouth County* v. *Moore*, 114 Iowa, 700; *Preston* v. *Sturgis Milling Co.*, 183 Fed. Rep. 1, 3; *Preston* v. *Chicago, St. Louis & N. O. R. R. Co.*, 183 Fed. Rep. 20, 22; *Postal Telegraph Cable Co.* v. *Alabama*, 155 U. S. 482, 487.

The probate courts in Minnesota, under the state constitution and statutes, have exclusive jurisdiction to control and administer the personal assets within its borders of a resident or nonresident decedent. Schouler on Wills, 5th ed., § 1091; *Wilkins* v. *Ellett*, 108 U. S. 256, 258; *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, 401; *Hanson* v. *Nygaard*, 105 Minnesota, 30; *Byers* v. *McAuley*, 149 U. S. 608; *Borer* v. *Chapman*, 119 U. S. 587, 600; *Moran* v. *Sturges*, 154 U. S. 256, 274; Rev. Stats., § 720, now Jud. Code, § 265; *Whitney* v. *Wilder*, 54 Fed. Rep. 554; *Gregory* v. *Lansing*, 115 Minnesota, 73; *Putnam* v. *Pittman*, 45 Minnesota, 242; *New Orleans* v. *Stempel*, 175 U. S. 309; *Wheeler* v. *New York*, 233 U. S. 434.

Mr. Justice Brandeis delivered the opinion of the court.

With a view to collecting ultimately at least $13,750 for taxes which the State of Iowa alleges it is entitled to have assessed and levied against the property of Abraham Slimmer, deceased, it asks leave to file in this court an original bill of complaint against the State of Minnesota, Abraham Slimmer, Junior, and Charles Bechhoefer, citizens of Minnesota, and Adolph Lipman, a citizen of Wisconsin. The bill alleges in substance as follows:

1. Slimmer, who had for many years been a resident of and domiciled in Iowa, died there testate on August 15, 1917, leaving personal property valued at $550,000, and

consisting, with the exception of personal effects and a few United States Liberty Bonds, wholly of promissory notes. All of this property, except the personal effects and one note for $3,000, was then in Minnesota in the possession of Slimmer Junior, who had had custody of the decedent's property for at least five years before his death. The $3,000 note was brought by him and Bechhoefer into Minnesota immediately thereafter.

2. For the period of at least five years before his death, Slimmer Senior had conspired with Slimmer Junior and Bechhoefer to defraud the State of Iowa of taxes which, by reason of his domicil in Iowa, might and should have been assessed there against his property during his life time; and to this end he had arranged with them that his will (if he should leave one) should be probated in Minnesota; had placed in the custody of Slimmer Junior, in Minnesota, all his property except his personal effects and the one note for $3,000; and had concealed his property from the Iowa officials and refused to return the same for taxation there.

3. Pursuant to this conspiracy, Slimmer Junior and Bechhoefer filed his will for probate in Minnesota on or about August 21, 1917, and procured the appointment of Bechhoefer as special administrator; and by falsely claiming that decedent was domiciled there, secured *ex parte* a finding to that effect, the probate of the will, and the appointment of themselves as executors. From this decree, the defendant Lipman, claiming to be an heir, appealed; and this appeal, which is now pending, has the effect of suspending the decree and leaving the property in the hands of the special administrator. The State of Iowa has not become a party to these proceedings.

4. Under the laws of Iowa, omissions to list and assess property may be corrected and the taxes collected within five years from the date of such omission. But the amount properly payable for taxes by Slimmer's estate cannot be

collected without assessment and levy thereof against his personal representatives; and such assessment and levy must be made within the State of Iowa.

5. On January 7, 1918, the District Court of Dubuque County, Iowa, (in a proceeding begun apparently on or about that day) decreed, at the instance of the treasurer of that State, that Slimmer Senior was domiciled therein, and granted to one Mullany letters of administration of his estate. About the same date the State, learning that Slimmer Junior and Bechhoefer were about to come into it for the purpose of taking testimony in the Minnesota probate proceedings, obtained from said district court an injunction restraining the witness from testifying and the designated officers from taking their depositions. Slimmer Junior and Bechhoefer have not been served in the Iowa suit and have declared their purpose to avoid service within that State.

The bill prays that it be adjudged and decreed: (*a*) that Slimmer Senior had for more than five years prior to his death been domiciled in Iowa; (*b*) that his estate consisted of evidences of indebtedness to him and that no part of his estate was, at his death, in Minnesota; (*c*) that Iowa has, and Minnesota has not, jurisdiction to administer upon his estate; and prays also (*d*) that such order be entered as will ensure the dismissal of the Minnesota probate proceedings, and the administration of the estate in Iowa; and (*e*) that, pending this suit, an injunction issue restraining the prosecution of the Minnesota probate proceedings.

The motion for leave to file the bill was submitted *ex parte*. In view of doubt entertained as to the propriety of granting it, consideration of the application was postponed (as in *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, and *Washington* v. *Northern Securities Co.*, 185 U. S. 254) so that the parties might be heard; and the motion was fully argued orally and upon briefs. Both the State

of Minnesota and the individual defendants, other than Lipman, objected to the granting of leave to file the bill. The State objected on the grounds that the only effective relief sought was an injunction against a proceeding in a state court; that the Minnesota probate court had exclusive jurisdiction to administer assets of a decedent within its borders, regardless of his domicil; and also that there was no authority granted by the state legislature for such an action in the federal courts. The individual defendants objected on the grounds that the Iowa administrator was the proper party plaintiff; that he was in any event a necessary party and joining him would oust the court of jurisdiction; that the relief sought would deny to the action of the Minnesota court full faith and credit; and that plaintiff had an adequate remedy at law. The original jurisdiction of the court to entertain a bill of this character was also questioned. Only one of these objections need be considered, for it presents a conclusive reason why leave to file the bill of complaint should be denied.

Substantially the whole of decedent's estate consisted of notes and bonds. Under an arrangement which had been in force for five years or more, these securities were, at the time of his death, in Minnesota in the custody and possession of an agent resident there. Minnesota imposes inheritance taxes; and its statutes provide (Minnesota Gen. Stats., 1913, § 2281) that no transfer of the property of a nonresident decedent shall be made until the taxes due thereon shall have been paid. Regardless of the domicil of the decedent, these notes and bonds were subject to probate proceedings in that State and likewise subject, at least, to inheritance taxes. Minnesota Gen. Stats., 1913, §§ 7205, 2271; *Bristol* v. *Washington County*, 177 U. S. 133; *Wheeler* v. *New York*, 233 U. S. 434. Furthermore, so far as concerns the property of the decedent, located at his death in Minnesota, the probate courts of

that State had jurisdiction to determine the domicil. *Overby* v. *Gordon*, 177 U. S. 214. But even if decedent was not domiciled in Minnesota, its court had the power either to distribute property located there according to the terms of the will applicable thereto, or to direct that it be transmitted to the personal representative of the decedent at the place of his domicil to be disposed of by him. Minnesota Gen. Stats., 1913, § 7278; *Harvey* v. *Richards*, 1 Mason, 381. See *Wilkins* v. *Ellett*, 108 U. S. 256, 258.

On or about August 21, 1917, Slimmer's executors filed their petition in the probate court for Ramsey County, Minnesota; and the court, in the exercise of its jurisdiction, appointed the defendant Bechhoefer, special administrator. As such, he took and now holds, pending an appeal to the state district court, possession of the whole of decedent's estate, consisting of the notes and Liberty Bonds as well as the personal effects. The only effective relief sought here is to enjoin the further administration of the estate of the deceased by the courts of Minnesota. It is clear that the State of Iowa is not entitled to such relief.

The motion for leave to file the bill of complaint is, therefore,

Denied.